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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 660

THE UNITED STATES OF AMERICA, APPELLANT

vs.

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

FILED DECEMBER 27, 1935

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INDEX

	Original	Print
Record from D. C. U. S., Northern Illinois	A	1
Caption [omitted in printing]	A	1
Recital as to filing of petition	B	1
Amended petition	1	1
Appendix A—List of subsidiaries showing capital stock issued, etc	26	13
Appendix B statement showing shipments, with names of consignors, shipping points, etc	27	14
Answer to amended petition	29	15
Narrative statement of evidence	30	25
Caption	30	25
Offers in evidence	30	26
Testimony of—		
Alexander F. Banks	31	26
Wm. J. Filbert	67	48
Gordon L. Edwards	98	66
John B. Carse	105	70
Edward Beecroft	107	71
Charles H. Kenzel	110	72
Frank G. Campbell	115	75
Thomas E. Bond	117	76
Scott M. Rogers	119	77
Offers in evidence	126	81

	Original	Print
Record from D. C. U. S., Northern Illinois—Continued.		
Narrative statement of evidence—Continued.		
Testimony of—		
Eugene J. Buffington	127	81
Henry Robinson	132	84
Thomas E. Bond (recalled)	136	86
Grant E. Chessman	151	94
Charles H. Kenzel (recalled)	158	98
Alexander G. Banks (recalled)	162	100
W. J. Hammond	171	105
Oscar Townsend	174	106
C. A. Lahey	175	107
F. H. Law	177	108
Charles Ervin	179	109
E. M. Brinkman	181	110
H. H. Bascom	184	112
H. H. Holcom	186	112
J. W. Elliott	187	113
H. S. Welton	188	114
R. C. Davidson	189	114
Wayne P. Hendricks	190	115
Wm. D. Lindsay	191	115
Stipulation as to testimony of certain shippers and railroad officials	192	116
Testimony of S. M. Rogers (recalled)	196	119
Offers in evidence	205	124
Testimony of—		
Donald L. Stumpf	206	124
Grant E. Chessman	208	125
Government exhibits:		
A—Correspondence re meetings of presidents	211	127
B—Correspondence re lease of C. L. S. & E. Ry. Co.	212	132
C—Correspondence, etc., re trackage agreement with C. & E. I. R. R. Co	213	157
D—Correspondence, etc., re appropriations and expenditures	214	180
E—Correspondence, etc., re banking and accounting	215	230
F—Correspondence, etc., re dividends	216	261
G—Correspondence, etc., re pensions	217	274
H—Correspondence re division counsel	218	278
I—Correspondence re bonuses	219	281
J—Correspondence re purchases	220	283
K—Letters to subsidiary companies re appropriations for construction, etc	221	292
L—Circulars issued to officers and employes of U. S. Steel Corp. and subsidiary companies, 1924–1931	222	307
M—By-laws of U. S. Steel Corp. and amendments thereto	223	322
N—Inter-company price list, fourth quarter, 1933	224	334
P—Memorandum re internal switching, March 3, 1927	225	341

Record from D. C. U. S., Northern Illinois—Continued.
Narrative statement of evidence—Continued.
Government exhibits—Continued. Original Print
Q—Pension rules—U. S. Steel and Carnegie pension fund 226 348
R—Statement showing terms of office of directors 227 354
S—Statement as to Joliet Division showing mills operated, engines worked, and clerks employed for weeks ending Dec. 18 and 25, 1926 228 355
T—Appropriation requests 229 357
Recital as to exhibit U 230 364
V—Financial statement—amount expended for maintenance and operation, 1926–1930 231 364
W—Statement showing coal purchased from U. S. Fuel Co., 1926–1930 232 364
X—Lease, C., L. S. & E. Ry. Co. to E., J. & E. Ry. Co., June 1, 1909 233 365
X–1—Supplemental lease, June 1, 1909 234 375
X–2—Amendment of Dec. 1, 1913, to lease of June 1, 1909 235 376
X–3—Amendment of Dec. 21, 1917, to lease of June 1, 1909 236 384
Y—Trackage agreement between C. & E. I. R. R. Co. and C., L. S. & E. Ry. Co., Feb. 1, 1909 237 389
Defendant's exhibits:
2—Resolution adopted by Board of Directors of C., L. S. & E. Ry. Co., Dec. 20, 1922 238 399
3—List of bidders—E., J. & E. R. R. coal contract 239 400
4—Agreement between U. S. Fuel Co. and E., J. & E. R. R., April 11, 1919 240 401
5 to 10, inc.—Statements of Illinois Steel Co. showing materials received and shipped—gross tons—1926 to 1930 241 403
11 to 13, inc.—Statements of Illinois Steel Co. showing average number of full time employes and salary and wages paid, 1926–1930 247 405
14—Map of E., J. & E. Ry 250 406
16 to 21, inc.—Statements showing industrial tracks owned and maintained by E., J. & E. Ry. Co. located on plants of industries—1926–1930 251 407
22—Statement showing carloads shipped by Illinois Steel Co. via E., J. & E. Ry 257 413
27—Financial statement of E., J. & E. Ry. Co., 1926–30 258 414
28 to 30, inc.—Statements of E., J. & E. Ry. Co. showing cost of mine coal for 1917 259 414
34—Partial list of terminal railroads affiliated through stock ownership with an industrial or mining corporation, etc 262 417
35—Statement by Joseph B. Eastman, Coordinator, Nov. 4, 1933 263 426
36—Annual report of E., J. & E. Ry. Co. for year ended Dec. 31, 1926 264 429

	Original	Print
Record from D. C. U. S., Northern Illinois—Continued.		
Stipulation re record and order thereon	265	441
Findings of fact and conclusions of law requested by petitioner	267	442
Objections to findings of fact and conclusions of law proposed by petitioner	316	480
Findings of fact and conclusions of law requested by defendant	341	
Order denying petitioner's requested findings and conclusions and approving defendant's requested findings and conclusions	346	499
Opinion, Woodward, J.	347	500
Final decree	362	512
Petition for appeal	363	512
Assignments of error	365	513
Order allowing appeal	368	515
Orders extending time	369	515
Praecipe for transcript of record	371	516
Docket entries	373	517
Clerk's certificate [omitted in printing]	376	519
Citation and service [omitted in printing]	377	519
Statement of points to be relied upon and designation as to printing record	379	519

A [Caption omitted.]

B In United States District Court, Northern District of Illinois, Eastern Division

No. 10152

UNITED STATES OF AMERICA, PLAINTIFF

vs.

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY, DEFENDANT

Recital as to filing of petition

Be it remembered, that the above-entitled action was commenced by the filing of the petition in the above-entitled cause in the office of the Clerk of the District Court of the United States for the Northern District of Illinois, Eastern Division, on this the 13th day of November 1930.

1 In United States District Court

In Equity, No. 10152

[Title omitted.]

Amended petition

Filed Feb. 26, 1932

To the Honorable the Judges of the United States District Court for the Northern District of Illinois, Eastern Division:

I

PURPOSE OF PETITION

The United States of America, by its Attorney for the Northern Judicial District of Illinois, acting for and under the direction of the Attorney General of the United States, at the request of the Interstate Commerce Commission of the United States, made under authority of the Act of Congress approved February 4, 1887, entitled "An Act to regulate Commerce", 24 Stat. 379. as
2 amended by section 3 of Act of Congress approved March 2, 1889, 25 Stat. 855, U. S. Code, Tit. 49, section 12, par. (1), now comes and brings this proceeding in equity against Elgin, Joliet and Eastern Railway Company, hereinafter called defendant. This amended petition is brought for the purpose of preventing and

restraining defendant from transporting in interstate commerce, in violation of section 1, paragraph 5, of Act of Congress, approved June 29, 1906, 34 Stat. 584, as amended, U. S. Code, Tit. 49, section 1, par. (8), commonly called the "Commodities Clause" and hereinafter so referred to, any article and/or commodity, other than timber and the manufactured products thereof manufactured, mined, or produced by it, or by any corporation of which it is a subsidiary, or by any corporation which is a subsidiary of any corporation of which defendant is a subsidiary, or manufactured, mined, or produced under its authority, or the authority of any corporation of which it is a subsidiary, or the authority of any corporation which is a subsidiary of any corporation of which defendant is a subsidiary, or which it, or any corporation of which it is a subsidiary, or any corporation which is a subsidiary of a corporation of which defendant is a subsidiary may own in whole or in part, or in which it, or any corporation of which it is a subsidiary, or any corporation
3 which is a subsidiary of the corporation of which defendant is a subsidiary, may have any interest, direct or indirect, except such articles and/or commodities as may be necessary and intended for its use in the conduct of its business as a common carrier.

And your petitioner respectfully alleges and shows:

DESCRIPTION OF DEFENDANT AND JURISDICTION

Elgin, Joliet and Eastern Railway Company is a corporation railroad company duly organized and existing under the general laws of the States of Illinois and Indiana, is subject to all the provisions of the Act of Congress entitled "An Act to regulate commerce", approved February 4, 1887, 24 Stat. 379, as amended, U. S. Code, Tit. 49, Chap. 1, and has its principal office at Chicago, in the State of Illinois, and within the territorial jurisdiction of this Court. Defendant is a common carrier engaged in interstate commerce and as such common carrier it operates a line of railroad which extends from Waukegan, Illinois, to Joliet, Illinois, thence easterly to Porter, Indiana, and forms what is known as the "Chicago Outer Belt Line." As such common carrier it also operates a line extending from Griffith, Indiana, to South Chicago, Illinois, which latter line runs through or adjoins the cities of Gary, Buffington, Indiana Harbor, Whiting, and Hammond, all located within the State of Indiana, and defendant serves as such common carrier all the cities hereinbefore named. Defendant also operates, as a common carrier, branch
4 lines of railroad which extend from Normantown, Illinois, to Aurora, Illinois, and from Walker, Illinois, to South Wilmington, Illinois.

Pursuant to the terms of an agreement dated February 1, 1909, between the Chicago, Lake Shore and Eastern Railway Company, which is a corporation duly organized under the laws of the States

of Illinois and Indiana, a common carrier engaged in interstate commerce, and hereinafter referred to as the Lake Shore Company, and Chicago and Eastern Illinois Railroad Company, a corporation duly organized under the laws of the State of Illinois, a common carrier engaged in interstate commerce, and hereinafter referred to as the Chicago Railroad Company, the interest of the Lake Shore Company in said agreement having been acquired by defendant by lease dated June 1, 1909, and which interest it still retains, defendant operates its engines, trains, and cars over such of the lines of the said the Lake Shore Company as extend from Chicago Heights, Illinois, to Rossville Junction, Illinois, a distance of 80 miles, and, in addition thereto, such of the lines of the said The Chicago Railroad Company as extend from Rossville Junction, Illinois, to Jackson, Indiana, a distance of 53.10 miles, and, in addition thereto, the lines of the said The Chicago Railroad Company as extend from Danville, Illinois, to Sidell Junction, Illinois, a distance of 22.20 miles, and in addition thereto, such of the lines of the said The Chicago Railroad Company as extend from Sidell Junction, Illinois, to Rossville Junction, Illinois, a distance of 34.40 miles.

5

III

HISTORY OF DEFENDANT

On or about April 30, 1884, The Joliet, Aurora and Northern Railway Company was duly incorporated under the laws of the State of Illinois. Thereafter and on or about March 18, 1887, Elgin, Joliet and Eastern Railway Company was duly incorporated under the laws of the State of Illinois and was authorized to issue capital stock in amount not to exceed the sum of $3,000,000. Thereafter, and on or about April 13, 1887, Elgin, Joliet and Eastern Railway Company of Indiana was duly incorporated under the laws of the State of Indiana and was authorized to issue capital stock in an amount not to exceed the sum of $1,000,000. Thereafter, and by deed dated October 29, 1888, The Joliet, Aurora and Northern Railway Company conveyed all its property and assets of every kind to the said Elgin, Joiliet and Eastern Railway Company, organized as aforesaid under the laws of the State of Illinois. Thereafter, and on or about December 4, 1888, Elgin, Joliet and Eastern Railway Company, organized as aforesaid under the laws of the State of Illinois, and Elgin, Joliet and Eastern Railway Company of Indiana, organized as aforesaid under the laws of the State of Indiana, duly consolidated as Elgin, Joliet and Eastern Railway Company, in accordance with the laws of the States of Indiana and Illinois, which con-
6 solidated corporation is defendant herein. Thereafter and subsequently to January 9, 1891, defendant acquired by purchase all the property and assets of every kind of the following railroad corporations: Gardner, Coal City and Northern Railway Company, a corporation duly organized under the laws of the State of

Illinois on or about May 18, 1888; Waukegan and Southwestern Railway Company, a corporation duly organized under the laws of the State of Illinois on or about June 28, 1889; Chicago Heights & Northern Railway Company, a corporation duly organized under the laws of the State of Illinois on or about May 13, 1897; and Griffith and Northern Railway Company, a corporation duly organized under the laws of the State of Indiana on or about August 19, 1899. At or about the time when the property and assets of the said railroad corporations were acquired, defendant's authorized capital stock was duly increased to an amount not to exceed $6,000,000, pursuant to the laws of the States of Indiana and Illinois.

Thereafter and on May 21, 1909, defendant caused its authorized capital stock to be increased to ten million dollars ($10,000,000) and such amount is its present authorized capitalization. Thereafter and by lease dated June 1, 1909, between the Lake Shore Company, as lessor, and defendant, as lessee, defendant acquired all the property and assets of every kind of the Lake Shore Company for a term of sixty (60) years, commencing June 1, 1909, and ending May
7 31, 1969. Under the terms of said lease dated June 1, 1909, defendant assumed the obligation to perform all the terms of all the outstanding agreements, contracts, and leases theretofore made by the Lake Shore Company and by the Lake Shore Company to be performed, which agreements included the agreement with the Chicago and Eastern Illinois Railway Company, hereinbefore referred to. The real property of the Lake Shore Company acquired by defendant by the terms of the lease dated June 1, 1909, hereinbefore referred to, consists largely of tracks and spurs located wholly within the limits of plants owned by the Illinois Steel Company, a corporation duly organized under the laws of the State of Illinois.

IV

COMMUNITY OF INTEREST BETWEEN DEFENDANT AND INDUSTRIES FOR WHICH IT PERFORMS TRANSPORTATION SERVICE

The United States Steel Corporation, a corporation duly organized under the laws of the State of New Jersey, and hereinafter referred to as the Steel Corporation, owns all the issued and outstanding capital stock of defendant. The Steel Corporation also owns all the issued and outstanding capital stock of the Illinois Steel Company, above referred to, and said Illinois Steel Company owns all the issued and outstanding capital stock of the Lake Shore Company.

8 The Steel Corporation also owns all the issued and outstanding capital stock of the following corporations:

American Steel & Wire Company, a corporation duly organized under the laws of the State of New Jersey; American Bridge Company, a corporation duly organization under the laws of the State

of New Jersey; American Sheet and Tin Plate Company, a corporation duly organized under the laws of the State of New Jersey; Federal Steel Company, a corporation duly organized under the laws of the State of New Jersey; and National Tube Company, a corporation duly organized under the laws of the State of New Jersey. Federal Steel Company, hereinbefore referred to, owns all the issued and outstanding capital stock of United States Fuel Company, a corporation duly organized under the laws of the State of Illinois. The Steel Corporation and Illinois Steel Company, hereinbefore referred to, own all the issued and outstanding capital stock of the Universal Atlas Cement Company, a corporation duly organized under the laws of the State of Indiana, and of United States Coal & Coke Company, a corporation duly organized under the laws of the State of West Virginia. The total amount of capital stock issued and outstanding of defendant, the Lake Shore Company, the Illinois Steel Company, American Steel & Wire Company, American Bridge Company,

9 American Sheet & Tin Plate Company, Federal Steel Company, National Tube Company, United States Coal & Coke Company, Universal Atlas Cement Company, and United States Fuel Company, and the amounts thereof owned by the Steel Corporation, or by corporations of which the Steel Corporation owns all the issued and outstanding capital stock, are shown in tabulations annexed hereto, marked Appendix A, and made a part hereof with the same force and effect in all respects as if the same were set forth herein in full.

The ownership by it of defendant's capital stock and the stock of said other subsidiaries named above is used and exercised by the Steel Corporation in a manner not normal and usual with ordinary stockholders, but said ownership by the Steel Corporation of the stock of said subsidiaries, and the ownership by said subsidiaries of the stock of their subsidiaries as hereinbefore alleged, is so used and exercised as to dominate and control the affairs of said corporations, and to destroy their independence and freedom of action in the management of their respective affairs, and to bring them all under and within the coordinated control, management, and direction of the Steel Corporation, which said control, management, direction, and coordination have been and now are effectuated, accomplished, and consummated through and by means of the following described, and numerous and various other methods, acts, means, and requirements:

10 (1) The Steel Corporation, by reason of the fact that it owns the entire capital stock of the defendant and said other subsidiaries, as hereinbefore alleged, is enabled to and does control and direct the election of directors and officers of the defendant and said other subsidiaries mentioned above.

(2) The Steel Corporation calls and conducts periodical meetings of the Presidents of its subsidiary corporations named above. Similar meetings of the traffic managers of the defendant and said

other subsidiaries are also called and conducted periodically by the Steel Corporation.

(3) The Steel Corporation requires that all important contracts, leases, and agreements which the defendant and said other subsidiaries contemplate entering into, be submitted to certain officials of the Steel Corporation for their consideration and approval; and the terms of such contracts and agreements are generally prescribed by the officials of the Steel Corporation.

(4) The defendant and said other subsidiaries are required to secure authority from the Steel Corporation before making any substantial expenditures in the conduct of their respective affairs; and in connection with this requirement the Steel Corporation issues instructions and rules directing the submission by defendant and said other subsidiaries of their proposed contracts and the formal approval thereof by the Steel Corporation. For a long time prior to May 4, 1920, defendant and said other subsidiaries were
11 not permitted to make expenditures exceeding $5,000 without having first obtained approval of the finance committee of the Steel Corporation. After May 4, 1920, defendant and said other subsidiaries were and have been permitted to make expenditures in the maximum amount of $10,000 without prior authorization by the Steel Corporation, but such authorization has been and still is required before expenditures in excess of the last named amount may be made by defendant and said other subsidiaries. Although the Steel Corporation did not require prior authorization by its officers for expenditures less than the maximum amounts just stated, for a long time it required defendant and said other subsidiaries to report to the Steel Corporation all expenditures between $500 and the maxima stated above; and such reports are now required by the Steel Corporation of defendant and said other subsidiaries of all expenditures ranging from $1,000 to the maximum of $10,000.

(5) Defendant's general offices and those of the Illinois Steel Company, one of the subsidiaries named above, are located in the Continental & Commercial Safe Deposit Company Building, 208 South La Salle Street, Chicago, Illinois, the office space being first rented from the last-named company by the Illinois Steel Company, which in turn rents a part thereof to the defendant.

(6) The Steel Corporation designates the banks in which monies of the defendant and said other subsidiaries shall be de-
12 posited; it fixes the amount of the balances to be maintained by them in said banks and requires that when said balances reach a certain sum, all other current money of the defendant and said subsidiaries shall be remitted to the Steel Corporation for deposit with it. All bank deposits of defendant and said other subsidiaries are subject to check and are interest bearing at certain named rates based on average daily balances, defendant's rate of interest being 2½ per cent. The Steel Corporation pays defendant and said other subsidiaries 2½ percent per annum on the funds

deposited by them with the Steel Corporation, but defendant receives no credit for any higher rate of interest that might be earned through investment by the Steel Corporation of defendant's deposited monies.

(7) The Steel Corporation requires defendant and said other subsidiaries to, and they do, maintain a clearance account for transactions between and among themselves and the Steel Corporation. When defendant's balance at the end of any month is in favor of the other subsidiaries, defendant remits its check to the Steel Corporation for the amount of such balance as may be due said other subsidiaries.

(8) The Steel Corporation prescribes the amount of dividends to be declared each year by defendant and said other subsidiaries.

(9) Defendant's officers and employees, and those of all said other subsidiaries, are subject to and governed by the same rules,
13 regulations, and plans as are the officers and employees of the Steel Corporation, promulgated by it for its own immediate employees.

(a) Defendant's officers and employees, and those of said other subsidiaries, are, like officers and employees of the Steel Corporation, accorded the privilege of purchasing, upon a deferred payment plan, common stock of the Steel Corporation at a price under the market value thereof, in proportion to the salary of the particular officer or employee. The Steel Corporation retains custody of such stock until the purchase price is fully paid, but if the purchaser leaves the employment of the Steel Corporation, or of the particular subsidiary by whom it is employed, before the purchase price of such stock is fully paid, such officer or employee loses its right to purchase said stock, and the stock is retained by the Steel Corporation, the purchaser being reimbursed for amounts paid in plus interest at 5 percent per annum.

(b) The Steel Corporation sets aside a certain sum of money annually as a pension fund in the name of the United States Steel & Carnegie Pension Fund. The defendant and said other subsidiaries named above are assessed annually for their respective proportions of deficiencies in this pension fund on a pro-rata basis fixed by the Steel Corporation.

(c) The defendant and said other subsidiaries mentioned above are assessed periodically upon a pro rata basis fixed by the
14 Steel Corporation for the purpose of raising funds to be expended by and in the name of the Steel Corporation as contributions to various charitable institutions.

(d) In the payment of salaries to the Division Counsel of the Steel Corporation for the Chicago district, the defendant is assessed and called upon annually for an amount fixed by the Steel Corporation as defendant's proportion of the amount paid the Division Counsel.

(10) The Steel Corporation requires and directs defendant and the other subsidiaries named above to make payments of "cash bonuses" to the officers and employees of their respective corporations and to charge the amounts of such bonuses to their respective pay-roll accounts.

(11) The Steel Corporation requires and directs the defendant and said other subsidiaries to purchase whenever possible all materials and supplies from subsidiaries of the Steel Corporation; and the subsidiary purchaser is required to pay whatever price is named by the subsidiary seller. Also defendant is required to sell all its "scrap" material to said Illinois Steel Company at whatever price the latter company determines it will pay, even though defendant could obtain a higher price from purchasers other than subsidiaries of the Steel Corporation.

(12) Under lease between it and Chicago, Lake Shore & Eastern Railway Company, mentioned above, the terms and conditions of which were prescribed by the Steel Corporation, the defendant is required to and does maintain as one of its common-carrier expenses, a number of industrial tracks located within the confines of the plant used exclusively by and for the benefit of said Illinois Steel Company. Said tracks are mere industrial plant facilities of the Illinois Steel Company, and the maintenance and operation thereof requires an expenditure by the defendant of a large sum of money annually, which sum in 1926 was approximately $670,000. The defendant has no similar arrangement for maintenance or operation of industrial or plant tracks for or with any independent industry which is not a subsidiary of the Steel Corporation.

(13) For many years, since, to wit, 1917, the Steel Corporation has filed, and now files, in its own name on behalf of defendant and said other subsidiaries named above and approximately 175 others of its subsidiary corporations, one consolidated federal income-tax return, pursuant to the Revenue Acts of the United States, which provide that a consolidated return of net income and invested capital shall be filed by affiliated corporations and that if substantially all the stock of two or more corporations is owned or controlled by the same interests they shall be deemed to be affiliated, and their taxes shall be computed and determined upon the basis of such consolidated return of net income and invested capital.

16 As above alleged, the Steel Corporation has exercised and now exercises such complete control over defendant and said other subsidiaries as to make them its mere branches, agencies, and departments, and none of said subsidiaries is free to control and manage its affairs in its own interest and behalf independently of the Steel Corporation, but said subsidiaries are controlled, dominated, and directed by the Steel Corporation, each in conjunction and coordination with, and as a complement to, the others of said subsidiaries, resulting in such commingling of their affairs and such com-

munity of interest between and among said subsidiaries and the Steel Corporation as to make them all, in substance and reality, one and the same organization consisting of many branches and departments, all of which are, in fact and reality, managed, dominated, controlled, directed, and coordinated by the Steel Corporation. Said management, domination, control, direction, and coordination of defendant and said other subsidiaries by the Steel Corporation, and the resulting commingling of their respective affairs and community of interest between and among them and the Steel Corporation, are so complete that the articles hereinafter described, and transported by defendant, are, in reality, mined, manufactured, produced, and transported by and under the control and direction of one and the same authority, namely, the Steel Corporation.

17 Defendant furnishes, and for several months last past has furnished, railroad transportation service, including transportation in interstate commerce of articles and commodities other than timber and the manufactured products thereof, to the following-named plants of the Steel Corporation and certain of its subsidiaries above named: (1) The Scott Street Works, owned by the American Steel & Wire Company, at Joliet, Illinois; (2) Gary Plant, owned by the American Bridge Company, at Gary, Indiana; (3) Gary Sheet Mill and Gary Tin Mill, owned by the American Sheet & Tin Plate Company, at Gary, Indiana; (4) Gary Works, at Gary, Indiana; Joliet Works, at Joliet, Illinois; and South Works, at South Chicago, Illinois; all owned by the Illinois Steel Company; (5) Gary Works, owned by the National Tube Company, at Gary, Indiana; and (6) Buffington Plant, owned by the Universal Atlas Cement Company, at Buffington, Indiana; and such railroad transportation service is the only railroad transportation service furnished during all said periods directly to said plants by any common carrier. Defendant constantly employs, and for several months last past has constantly employed, a large number of its yard locomotives in performing intraplant switching service for the subsidiaries of the Steel Corporation, hereinbefore in this paragraph named. Defendant furnishes, and for several months last past has fur-

18 nished, railroad transportation service, including transportation in interstate commerce of articles and commodities other than timber and the manufactured products thereof, to the Rockdale Works at Joliet, Illinois, and the Waukegan Works at Waukegan, Illinois, both of which are owned by the American Steel & Wire Company, hereinbefore referred to. Defendant transports, and for several months last past has transported, in the regular course of its business in interstate commerce, and by means of and pursuant to the agreement with the Chicago and Eastern Illinois Railway Company, hereinbefore referred to, coal removed from mines which are owned by the United States Fuel Company and located at Westville, Illinois, notwithstanding that a large proportion of such coal is not necessary or intended for the use of defendant in the conduct of its business as a common carrier. Defendant transports, and for sev-

eral months last past has transported, in the regular course of its business in interstate commerce through and over its connecting lines, coal removed from mines which are owned by the United States Coal & Coke Company and located at Gary, West Virginia; and Lynch, Kentucky; notwithstanding that a large proportion of such coal is not necessary or intended for the use of defendant in the conduct of its business as a common carrier.

The total operating revenues of defendant for the year ending December 31, 1929, were approximately twenty-six million
19 dollars ($26,000,000.00). Approximately sixty per centum (60%) of this amount accrued from the transportation of articles or commodities other than timber and the manufactured products thereof, which defendant, the Steel Corporation, or a corporation subsidiary of the Steel Corporation, either manufactured, mined, or produced, directly or under the authority of them, or one or more of them, or which they, or one or more them, owned, or in which they, or one or more of them, had an interest, and which were not necessary or intended for the use of defendant in the conduct of its business as a common carrier.

ARTICLES AND COMMODITIES TRANSPORTED BY DEFENDANT IN WHICH IT HAS AN INTEREST

Defendant has, during the current calendar year and during the period intervening the calendar years 1927 and 1929, inclusive, transported in interstate commerce, and still transports in interstate commerce, articles and/or commodities, other than timber and the manufactured products thereof, which have been manufactured, mined, or produced by it or by the Steel Corporation, or by other corporations hereinbefore designated which are subsidiaries of the Steel Corporation, or under the authority of defendant or of the Steel Corporation or of other corporations hereinbefore designated which are subsidiaries of the Steel Corporation, or which the defendant, the Steel Corporation, or other corporations hereinbefore designated which are subsidiaries of the Steel Corporation
20 own in whole or in part, or in which they, or one or more of them, have an interest, direct or indirect, which articles and/or commodities are exclusive of such articles and/or commodities as are necessary or intended for the use of defendant in the conduct of its business as a common carrier, to wit:

(1) bituminous coal, of which defendant has transported in interstate commerce during the calendar year 1927 a total of 216,149 cars which contained a total of 11,967,517 tons, and during the calendar year 1928, 223,327 cars which contained a total of 12,396,595 tons and during the calendar year 1929, 241,027 cars which contained a total of 13,429,831 tons, and during the calendar year 1930 has transported in interstate commerce, and is still so transporting, large quantities thereof, of which total tonnage the Steel Corporation or subsidiaries thereof consumed and are consuming approximately seventy per centum (70%) at plants owned by the said subsidiary

corporations and located on defendant's railroad, which bituminous coal was mined in and from mines owned and controlled by the United States Fuel Company and located at Westville, Illinois, and mines owned and controlled by the United States Coal & Coke Company and located at Gary, West Virginia, and Lynch, Kentucky, transported in interstate commerce from said mines to the plants of the subsidiary corporations of the Steel Corporation, hereinbefore referred to, and owned during all the period of said
21 transportation by the Steel Corporation or a subsidiary thereof;

(2) articles of iron and steel manufacture, of which defendant transported in interstate commerce, during the calendar year 1929, a total of 8,048,637 tons, of which approximately 81% was manufactured or produced by subsidiary corporations of the Steel Corporation or under the authority of one or more of them;

(3) coke, of which defendant transported in interstate commerce, during the calendar year 1929, a total of approximately 2,605,734 tons, and of which defendant transported approximately 2,562,997 tons in interstate commerce which was manufactured or produced at by-product ovens of the Illinois Steel Company at Gary, Indiana, and Joliet, Illinois, and transported to steel mills owned by the Illinois Steel Company at South Chicago, Illinois, and elsewhere, which coke was owned during all the period of said transportation by the Steel Corporation or a subsidiary thereof; and

(4) cement, of which defendant transported in interstate commerce, during the calendar year 1929, a total of approximately 1,043,081 tons, of which approximately 82% was manufactured by the Buffington, Indiana, plant owned by the Universal Atlas Cement Company.

Certain shipments of coal, which subsidiaries of the Steel Corporation mined during the calendar years 1929 or 1930, and
22 which defendant transported in interstate commerce subsequently to January 1, 1930, notwithstanding that such coal was not necessary or intended for use of defendant in the conduct of its business as a common carrier, and certain shipments of other commodities, other than timber and the manufactured products thereof, produced or manufactured by subsidiaries of the Steel Corporation or under the authority of them, or one or more of them, or which they, or one or more of them, owned in whole or in part, or in which they, or one or more of them, had an interest, which defendant transported in interstate commerce, subsequently to January 1, 1930, exclusive of articles or commodities which were necessary or intended for the use of defendant in the conduct of its business as a common carrier, are described in tabulations annexed hereto, marked Appendix B, and made a part hereof with the same force and effect in all respects as if the same were set forth herein in full; but petitioner alleges that the specific shipments referred to and identified in Appendix B are not the only shipments of articles or commodities, other than timber and the manufactured products

thereof, which defendant has transported in interstate commerce contrary to provisions of the Commodities Clause of the Interstate Commerce Act, but on the contrary alleges that defendant has made both prior and subsequently to January 1, 1930, and is still making, many other shipments of such articles or commodities, contrary to the said statute.

23

VI

That by reason of the facts hereinbefore alleged and otherwise, and more particularly by reason of the supervision, management, direction, domination, coordination, and control exercised as above alleged, by the Steel Corporation of and over the defendant and said other subsidiaries and their respective operations, transactions, and affairs, petitioner alleges:

First. That, defendant and said mining, manufacturing, and producing subsidiaries named above not being in substance and good faith bona fide corporations separate from and independent of the Steel Corporation, but being mere adjuncts, branches, departments, or instrumentalities thereof, defendant, at the time it transported the articles mined, manufactured, and produced by said other subsidiaries as hereinabove described, had, and has with respect to all such articles so produced and transported, an interest direct or indirect in said articles within the meaning of said Act of Congress.

Second. That said articles so mined, manufactured, and produced by said manufacturing and producing subsidiaries of the Steel Corporation, and transported as aforesaid by defendant, are mined, manufactured, produced, and transported by and under the direction of the same authority, namely, the Steel Corporation.

Third. That the transportation of said articles by defendant
24 under the circumstances hereinbefore alleged has been, is, and will be unlawful and in violation of the Act of Congress aforesaid.

Fourth. That defendant has for many years engaged in said unlawful transportation as hereinbefore alleged, and unless enjoined, restrained, and prevented by order of this Court will continue so to do, in violation of said Act of Congress.

VII

PRAYER

Wherefore your petitioner prays:

I. That a writ of subpœna issue directed to defendant commanding it to appear herein and answer under oath the allegations contained in the foregoing petition and to abide by and perform such acts and decrees as the Court may make in the premises.

And, further, that the Court order, adjudge, and decree as follows:

II. That defendant be perpetually enjoined and restrained from transporting in interstate commerce any article and/or commodity, other than timber and the manufactured products thereof, manu-

factured, mined, or produced by it, or by any corporation of which it is a subsidiary, or by any corporation which is a subsidiary of any corporation of which defendant is a subsidiary, or manufactured, mined, or produced under its authority, or the authority of any corporation of which it is a subsidiary, or the authority of any corporation which is a subsidiary of any corporation of which
25 defendant is a subsidiary, or which it, or any corporation of which it is a subsidiary, or any corporation which is a subsidiary of a corporation of which defendant is a subsidiary, may own in whole or in part, or in which it, or any corporation of which it is a subsidiary, or any corporation which is a subsidiary of any corporation of which defendant is a subsidiary, may have any interest, direct or indirect, except such articles or commodities as may be necessary and intended for its use in the conduct of its business as a common carrier, and that defendant be further perpetually enjoined and restrained from continuing to do said acts, or any of them, in violation of said Commodities Clause.

III. That petitioner recover its costs and disbursements.

IV. That petitioner have such other, further, and general relief as may be equitable and proper.

UNITED STATES OF AMERICA,
By GEORGE E. Q. JOHNSON,
United States Attorney for the Northern District of Illinois.

WILLIAM D. MITCHELL,
Attorney General.
JOHN LORD O'BRIAN,
The Assistant to the Attorney General.
ELMER B. COLLINS,
Special Assistant to the Attorney General.
BURT L. SMELKER,
Attorney, Interstate Commerce Commission.

26 *Appendix A to amend petition.*

Subsidiaries	Capital stock issued		Amount owned by Steel Corporation
Elgin, Joliet and Eastern Railway Company	(Com.)	$10,000,000	$10,000,000
Chicago, Lake Shore and Eastern Railway Company	(Com.)	9,000,000	[1]
Illinois Steel Company	(Com.)	18,650,600	18,650,600
American Bridge Company	(Com.)	10,000,000	10,000,000
American Sheet & Tin Plate Company	(Com.)	24,500,000	24,500,000
	(Pfd.)	24,500,000	24,500,000
American Steel & Wire Company	(Com.)	50,000,000	50,000,000
	(Pfd.)	40,000,000	40,000,000
Federal Steel Company	(Com.)	46,484,300	46,484,300
	(Pfd.)	53,260,900	53,260,900
National Tube Company	(Com.)	45,000,000	45,000,000
	(Pfd.)	40,000,000	40,000,000
Universal Atlas Cement Company	(Com.)	3,500,000	[2] 2,500,000
United States Fuel Company	(Com.)	3,600,000	[3]
United States Coal & Coke Company	(Com.)	12,500,000	[4] 10,500,000

[1] $9,000,000 owned by Illinois Steel Company.
[2] Balance of $1,000,000 owned by Illinois Steel Company.
[3] $3,600,000 owned by Federal Steel Company.
[4] Balance of $2,000,000 owned by Illinois Steel Company.

Appendix B to amended petition

Consignor	Shipping point	Date of shipment	Car reference	Commodity	Weight	Consignee	Destination	Route
		1930			*Pounds*			
Illinois Steel Company	Gary, Ind	Jan. 12	C., St. P., M. & O., 30650	Car wheels	86,890	C. & N. W. Ry. Co.	Chicago, Ill	1
	Gary, Ind	Jan. 14	C. & N. W., 121362	Car wheels	66,080	C. & N. W. Ry. Co.	Chicago, Ill	1
	South Chicago, Ill	Jan. 18	E., J. & E., 21100	Rails	78,280	M. F. & C. works	Chicago Heights, Ill	2
	South Chicago, Ill	Jan. 20	P., & W. V., 8107	Plates	63,700	M. F. & C. works	Chicago Heights, Ill	2
	Joliet, Ill	Jan. 22	E., J. & E., 60341	Angle bars	13,280	I. S. Co.	Gary, Ind	3
	Joliet, Ill	Jan. 27	C., C., C. & St. L., 54078	Angle bars	66,220	N. Y. C. R. R. Co.	Pine, Ind	4
	Joliet, Ill	Jan. 27	E., J. & E., 71454	Coke	79,100	I. S. Co.	South Chicago, Ill	2
	Joliet, Ill	Jan. 27	E., J. & E., 70278	Coke	80,400	I. S. Co.	South Chicago, Ill	2
American Bridge Company.	Gary, Ind	Jan. 15	C., B. & Q., 195301	Plates and rivets	86,010	C., B. & Q. R. R. Co.	Chicago, Ill	5
	Gary, Ind	Jan. 17	A., T. & S. F., 170821	Trusses	71,057	A., T. & S. F. Ry.	Chicago, Ill	6
American Sheet & Tin Plate Company.	Gary, Ind	Jan. 25	N. Y. C., 249024	Sheet steel	43,210	A. S. E. Co.	Aurora, Ill	7
	Gary, Ind	Jan. 27	E., J. & E., 22213	Waster sheets	65,580	R. W. M. Co.	Aurora, Ill	7
American Steel & Wire Company.	Joliet, Ill	Jan. 3	E., J. & E., 60013	Plain wire	38,401	N. T. Co.	Gary, Ind	3
	Joliet, Ill	Jan. 20	U. P., 13564	Wire nails	40,232	F. L. Co.	Gary, Ind	3
	Waukegan, Ill	Jan. 7	E., J. & E., 20868	Steel rods	60,360	La S. S. Co.	Hammond, Ind	3
	Waukegan, Ill	Jan. 7	E., J. & E., 21355	Steel rods	64,340	La S. S. Co.	Hammond, Ind	3
The National Tube Company.	Gary, Ind	Jan. 21	C., R. I. & P., 187337	Pipe	87,400	C., R. I. & P. Ry.	South Chicago, Ill	3
	Gary, Ind	Jan. 23	E., J. & E., 22717	Pipe	92,400	I. S. Co.	South Chicago, Ill	3
Universal Atlas Cement Company.	Buffington, Ind	Jan. 27	U. P. C. X., 753	Cement	121,600	I. S. Co.	South Chicago, Ill	3
	Buffington, Ind	Jan. 27	U. P. C. X., 946	Cement	121,600	I. S. Co.	South Chicago, Ill	3
United States Fuel Company.	Westville, Ill	Jan. 6	E., J. & E., 70829	Coal	132,980	I. S. Co.	South Chicago, Ill	2
	Westville, Ill	Jan. 6	E., J. & E., 16907	Coal	120,000	I. S. Co.	South Chicago, Ill	2
United States Coal & Coke Company.	Gary, W. Va	Jan. 21	N. & W., 15119	Coal	154,400	I. S. Co.	Gary, Ind	8
	Gary, W. Va	Jan. 22	N. & W., 35146	Coal	117,400	I. S. Co.	Gary, Ind	8
	Lynch, Ky	Jan. 20	U. S. C. X., 1783	Coal	103,600	I. S. Co.	Gary, Ind	9
	Lynch, Ky	Jan. 20	U. S. C. X., 1565	Coal	106,000	I. S. Co.	Gary, Ind	9

EXPLANATION OF ABBREVIATIONS

A. S. E. Co. = All Steel Equipment Co.
A., T. & S. F. Ry. = Atchison, Topeka & Santa Fe Ry. Co.
C. & N. W. Ry. Co. = Chicago & North Western Ry. Co.
C., B. & Q. R. R. Co = Chicago, Burlington & Quincy R. R. Co.
C., C., C. & St. L. = Cleveland, Cincinnati, Chicago & St. Louis Railway Co.
C., R. I. & P. Ry = Chicago, Rock Island & Pacific Ry. Co.
C., St. P., M. & O. = Chicago, St. Paul, Minneapolis & Omaha Ry. Co.
E., J. & E. = Elgin, Joliet and Eastern Ry. Co.
F. L. Co. = Foster Lumber Co.
I. S. Co. = Illinois Steel Co.
La S. S. Co. = La Salle Steel Co.
M. F. & C. works = Morden Frog & Crossing works.
N. & W. = Norfolk & Western Railway Co.
N. T. Co. = National Tube Co.
N. Y. C. R. R Co. = New York Central R. R. Co.
P. & W. V. = Pittsburgh & West Virginia Railway Co.

EXPLANATION OF ABBREVIATIONS—continued

R. W. M. Co. = Richards Wilcox Manufacturing Co.
U. P. = Union Pacific R. R. Co.
U. P. C. X. = Universal Portland Cement Co.
U. S. C. X. = United States Coal & Coke Co.

EXPLANATION OF ROUTE NUMBERS

1 = E., J. & E., Belt Ry., C. & N. W. Ry. Co.
2 = E., J. & E. via Griffith, Ind.
3 = E., J. & E.
4 = E., J. & E., N. Y. C. Ry. Co.
5 = E., J. & E., Belt. Ry., C., B. & Q. R. R. Co.
6 = E., J. & E., Belt Ry., A., T. & S. F. Ry. Co.
7 = E., J. & E., C., B. & Q. R. R. Co.
8 = Norfolk & Western Ry. Co., Pennsylvania Railroad, E., J. & E.
9 = Louisville & Nashville R. R. Co., Chicago, Indiana & Louisville Ry., E., J. & E.

29 In United States District Court

[Title omitted.]

Answer of Elgin, Joliet and Eastern Railway Company to amended petition of United States of America

Filed April 26, 1932

The answer of the defendant, Elgin, Joliet and Eastern Railway Company, to the amended petition of the United States of America for an injunction and restraining order, as prayed for therein, or so much thereof as this defendant is advised is material or necessary for it to answer, respectfully shows:

1. Defendant admits the allegation in sub-paragraph first of paragraph "I" that said amended petition is brought by the United States of America, by its attorney for the Northern Judicial District of Illinois, acting for and under the direction of the Attorney General of the United States, and denies that it has any knowledge or information sufficient to form a belief as to each and every other allegation in said sub-paragraph contained; and, in so far as they may become material upon the hearing, it will require strict proof thereof.

2. Defendant admits the allegations contained in sub-paragraphs second and third of said paragraph in manner and form as alleged.

3. Defendant admits the allegations contained in paragraph "III" in manner and form as alleged.

4. Defendant admits the allegations contained in subparagraphs first, second and third of paragraph "IV" in manner and form as alleged.

5. Answering sub-paragraph fourth of said paragraph, defendant denies that it has any knowledge or information sufficient to form a belief as to each and every allegation therein contained in so far as said allegations pertain to the relations between said Steel Corporation and its subsidiaries other than defendant or between said subsidiaries and their subsidiaries, particularly as to whether said Steel Corporation or its said subsidiaries use or exercise their respective ownerships of the capital stocks of their respective subsidiaries (other than defendant) in a manner not normal or usual with ordinary stockholders or so as to dominate or control the affairs of their respective subsidiaries (other than defendant), or so as to destroy their independence or freedom of action in the management of their respective affairs and to the extent that said allegations may become material upon the hearing, defendant will require strict proof thereof; in so far as said allegations pertain to the relation between defendant and said Steel Corporation and/or its subsidiaries other than defendant, defendant denies each and every allegation in said sub-paragraph contained, and each and every inference sought to be

created thereby; and specifically, but without limiting in any way the generality of its denial aforesaid, defendant denies that the ownership of its capital stock by said Steel Corporation is used or exercised by the latter in a manner not normal and usual to ordinary stockholders; denies that the ownership of said stock by said Steel Corporation is so used or exercised as to dominate or control the affairs of defendant, or to destroy defendant's independence or freedom of action in the management of its affairs, or to bring it under or within the control, management or direction of said Steel Corporation, either through or by means of the methods, acts or requirements alleged therein or otherwise; but on the contrary, defendant alleges that, in all its affairs, and particularly in the performance of its business and duties as a common carrier, it is as free and independent as any railroad company is free and independent of its stockholders.

6. Answering section (1) of said sub-paragraph, defendant admits that said Steel Corporation, by reason of the fact that it owns the entire capital stock of defendant and in a manner normal and usual to ordinary stockholders, is enabled to and does control the election of directors of defendant; denies that said Steel Corporation is enabled to or does control or direct the election of officers of defendant; and alleges that the Board of Directors of defendant, in the full exercise of its discretion and judgment and without direction or interference by said Steel Corporation, has elected and does elect the officers of defendant.

7. Answering section (2) of said sub-paragraph, defendant denies that said Steel Corporation calls and conducts periodical meetings at which the President of defendant is required to attend; and alleges that the president of defendant is invited to and occasionally does attend periodical meetings of presidents of said Steel Corporation's subsidiaries, other than defendant, but that at said meeting the performance by the defendant of its duties or functions as a common carrier are not discussed, directed or controlled. Further answering said section, defendant denies that similar meetings of the traffic managers of defendant and said other subsidiaries are also called or conducted periodically, or otherwise, by said Steel Corporation; but alleges that the traffic managers of several of the subsidiary manufacturing and mining companies of said Steel Corporation have been and now are organized into a Traffic Committee, and that said Traffic Committee meets periodically at New York, Pittsburgh and other places suited to the convenience of its members; and defendant further alleges that neither its Traffic Manager, nor any other of its officers or employees, is a member of said Committee; that neither its Traffic Manager, nor any other of its officers or employees, attends such meetings, except occasionally, and then only when said Traffic Manager, or other of the defendant's officers or employees, desires to so attend, solely and exclusively in the interest and for the benefit of defendant.

8. Answering section (3) of said sub-paragraph, defendant denies that said Steel Corporation requires that all, or any, important con-

tracts, leases, or agreements which it contemplates entering into be submitted to officials of the said Steel Corporation for their consideration or approval, and denies that the terms of such contracts and agreements, or either, are prescribed by the officials of said Steel Corporation.

9. Answering section (4) of said sub-paragraph, defendant denies that it is required to secure authority from said Steel Corporation before making any substantial expenditures in the conduct of its affairs; denies that in connection with this requirement said Steel Corporation issues instructions and rules directing the submission by defendant of its proposed contracts and the formal approval thereof by said Steel Corporation; denies that for a long time prior to May 4, 1920, defendant was not permitted to make expenditures exceeding $5,000 without having first obtained approval of the Finance Committee of said Steel Corporation; denies that after May 4, 1920, defendant was required to secure authorization before making expenditures in excess of $10,000; denies that defendant was required for a long time to report to said Steel Corporation all expenditures between $500 and the maxima stated above; and denies that such reports are now required by said Steel Corporation of defendant of all expenditures ranging from $1,000 to the maximum of $10,000. Further answering said section, defendant alleges that at the request of said Steel Corporation acting as its stockholder, it secures the approval of the Finance Committee of that corporation before making any substantial expenditures for improvements, extensions, additions, and other capital expenditures, where the cost thereof exceeds $10,000, but that approval of expenditures for other purposes is neither requested of defendant, nor desired by said Steel Corporation. Defendant further alleges it has always made all expenditures necessary to provide, and has provided, ample facilities for the reasonable and proper service of shippers over its line, and for the performance of its duties and functions as a common carrier; and that, at the request of said Steel Corporation, but in its own discretion, defendant has reported to said Steel Corporation all capital expenditures over $500 and now reports such expenditures over $1,000 in amount and contracts covering same, after they have been incurred or made, respectively.

10. Answering section (5) of said sub-paragraph, defendant admits that its general offices and those of the Illinois Steel Company, one of the subsidiaries named above, are located in the Continental and Commercial Safe Deposit Company Building, 208 South La Salle Street, Chicago, Illinois, and that the office space is first rented from the last named company by the Illinois Steel Company, which in turn rents a part thereof to defendant; and alleges that the lease for said space occupied by it was made in its own discretion, and that defendant is better able thereby to increase or decrease the amount of office space required to meet its needs under changing conditions and at a less cost than if it had leased the space directly from the owner of the building.

11. Answering section (6) of said sub-paragraph, defendant denies that said Steel Corporation designates the banks in which moneys of defendant shall be deposited; denies that said Steel Corporation fixes the amount of the balances to be maintained by it in said banks; denies that said Steel Corporation requires that when said balances reach a certain sum that all current moneys of defendant shall be remitted to said Steel Corporation for deposit with it, and denies that the deposits made by defendant in various banks are always interest bearing at the rate of 2½% as based on average daily balances; and admits that said bank deposits of defendant are subject to check and are interest bearing, that defendant has deposited and does deposit moneys with said Steel Corporation and that said Steel Corporation pays defendant 2½% per annum on the funds so deposited; and alleges that it has freely and in its own discretion deposited its funds with said Steel Corporation, that it has never received from banks in which it has deposited its moneys a higher rate of interest than has been paid to it by said Steel Corporation for moneys so deposited, and that said Steel Corporation has acted and does act strictly as a banking corporation would act in its relation with defendant.

12. Answering section (7) of said sub-paragraph, defendant denies that said Steel Corporation requires it to maintain a clearance account for transactions between and among defendant and said Steel Corporation and its subsidiaries other than defendant; admits that said Steel Corporation does maintain such clearance account for certain transactions between it and its subsidiaries, including defendant, and that when defendant's balance at the end of any month is in favor of other subsidiaries, defendant remits its check to said Steel Corporation for the amount of such balance as may be due said other subsidiaries; but defendant alleges that all payments accruing from or to the subsidiaries of said Steel Corporation, in connection with the common carrier services performed by defendant, are not settled through such clearance account but are settled strictly in accordance with the provisions of the Interstate Commerce Act under rules as prescribed by the Interstate Commerce Commission; that its limited use of said clearance account was and is voluntary and in its own discretion and that the maintenance of said account has proven an efficient and beneficial method of dealing with said subsidiaries of said Steel Corporation in respect to the transactions concerned.

13. Answering section (8) of said sub-paragraph, defendant denies that said Steel Corporation prescribes the amount of dividends to be declared each year by defendant and alleges that the time and amount of said dividends is within the sound discretion of defendant's Board of Directors, as limited by the rule of law that dividends must be out of surplus.

14. Answering section (9) of said sub-paragraph, defendant denies that its officers and employees, or either, are subject to or

governed by the same rules, regulations, or plans as are the officers and employees of said Steel Corporation, promulgated by it for its own immediate employees.

15. Answering sub-section (a) of said section (9) of said sub-paragraph, defendant admits the allegations therein contained.

16. Answering sub-section (b) of said section (9) of said sub-paragraph, defendant denies that said Steel Corporation sets aside a certain sum of money annually as a pension fund in the name of the United States Steel and Carnegie Pension Fund, and denies that defendant is assessed annually for its respective proportion of deficiencies in this pension fund on a pro rata basis fixed by said Steel Corporation; and alleges that said United States Steel and Carnegie Pension Fund is a non-stock corporation formed under the laws of the Commonwealth of Pennsylvania, that it manages the payment of pensions to certain employees of defendant and of said subsidiaries of said Steel Corporation, that the defendant pays into said Pension Fund the entire amount which is paid from said fund to employees of defendant, except a comparatively small part thereof, which is allocated to defendant out of the earnings of investments held by said Pension Fund and that defendant's use of said Pension Fund was and is voluntary and in the sound discretion of defendant's Board of Directors, and has been and is efficient and beneficial to defendant.

17. Answering sub-section (c) of section (9) of said sub-paragraph, defendant denies that it is assessed periodically, or otherwise upon a pro rata basis fixed by said Steel Corporation for the purpose of raising funds to be expended by and in the name of said Steel Corporation as contributions to various charitable institutions; and alleges that at such times as defendant and other subsidiaries of said Steel Corporation are solicited for contributions to charitable institutions or for charitable purposes, authorized officials of the corporations concerned confer with each other in order to arrive at a proper amount and that the amounts of any proposed contributions are sometimes reported to said Steel Corporation as stockholder of defendant and said other subsidiaries for its approval; that any contributions made by defendant are usually made in its own name and are not made by or in the name of said Steel Corporation and that said contributions are the result of the independent action of, and in the absolute discretion of, defendant's Board of Directors.

18. Answering sub-section (d) of section (9) of said sub-paragraph, defendant denies that in the payment of salaries to the Division Counsel of said Steel Corporation for the Chicago district, it is assessed or called upon annually or otherwise for an amount fixed by said Steel Corporation, as its proportion of the amount paid the Division Counsel; but on the contrary alleges that it employs its own counsel and pays therefor directly and not through said Steel Corporation or through any of its subsidiaries.

19. Answering section (10) of said sub-paragraph, defendant denies that said Steel Corporation requires it to make payment of "cash bonuses" to its officers or employees and/or to charge the amounts of such bonuses to its payroll account.

20. Answering section (11) of said sub-paragraph, defendant denies that said Steel Corporation requires or directs defendant to purchase whenever possible all, or any, materials and supplies from subsidiaries of said Steel Corporation, denies that it is required to pay whatever price is named by the subsidiary seller and denies that it is required to sell all or any of its scrap material to the Illinois Steel Company at whatever price the latter company determines it will pay, or otherwise.

21. Answering section (12) of said sub-paragraph, defendant admits that a number of industrial tracks, located within the confines of the plants of said Illinois Steel Company, are leased to defendant by the Chicago, Lake Shore & Eastern Railway Company, but denies that all of said tracks are used exclusively by and for the benefit of said Illinois Steel Company; denies that the terms and conditions of said lease were prescribed by said Steel Corporation. Defendant admits that under the terms of said lease it is required to and does maintain said tracks, and admits that the maintenance and operation thereof require an expenditure by defendant of a large sum of money annually, which sum in 1926 was approximately $670,000; but denies that said tracks are mere industrial plant facilities of said Illinois Steel Company, and alleges that said tracks are necessary for the receipt and delivery of freight by defendant from and to said Illinois Steel Company in the performance of defendant's common carrier service; and defendant further alleges that all services performed over said tracks, which services embrace the maintenance of said receiving and delivering tracks, are charged for by defendant in accordance with the lawfully published tariffs on file with the Interstate Commerce Commission and the respective state commissions of the states of Illinois and Indiana. Defendant denies that is has no similar arrangement for maintenance or operation of tracks for or with any independent industry which is not a subsidiary of said Steel Corporation, and alleges that it has always and now is willing to make similar arrangements with any shipper, whether or not a subsidiary of said Steel Corporation, which may desire to make such arrangement.

22. Answering section (13) of said sub-paragraph, defendant admits the allegations contained therein, and alleges that in its own sound discretion it filed its consent to said consolidated return in accordance with the applicable provisions of the various revenue acts, and further alleges that in no case has defendant been assessed as taxes an amount greater than that which defendant would have paid had it filed a separate return.

23. Answering sub-paragraph fifth of said paragraph, defendant denies that it has any knowledge or information sufficient to form a

belief as to each and every allegation therein contained in so far as said allegations pertain to the relations between said Steel Corporation and its subsidiaries other than defendant, and to the extent that said allegations may become material upon the hearing, defendant will require strict proof thereof; in so far as said allegations pertain to the relation between defendant and said Steel Corporation and/or its subsidiaries other than defendant, defendant denies each and every allegation in said sub-paragraph contained; and specifically, but without limiting in any way the generality of its denial aforesaid, defendant denies that said Steel Corporation has exercised or now exercises such complete control over it as to make it a mere branch, agency, or department; denies that it is not free to control and manage its affairs in its own interest and behalf independently of said Steel Corporation; denies that it is controlled, dominated, or directed by said Steel Corporation in conjunction or in coordination with, or as a complement to, the others of said subsidiaries, or otherwise; denies that its affairs are commingled with the affairs of said Steel Corporation or with the affairs of any of the subsidiaries of said Steel Corporation; denies that defendant and said Steel Corporation and/or the subsidiaries of said Steel Corporation or any of them are, in substance or reality, one and the same organization consisting of many branches and departments, all of which are, in fact and reality, managed, dominated, controlled, directed, or coordinated by said Steel Corporation; and denies that any of the articles described in said amended petition, transported by defendant, were or are, in reality, transported by or under the control, direction or authority of said Steel Corporation.

24. Answering sub-paragraphs sixth and seventh of said paragraph, defendant admits the allegations therein contained in manner and form as alleged, except defendant denies that it owned or had any interest in any of the articles referred to or that any of such articles were manufactured, mined, or produced by or under its authority.

25. Answering sub-paragraph eighth of said paragraph, entitled "Articles and commodities transported by defendant in which it has an interest", defendant admits that it has, during the period intervening the calendar years 1927 and 1929, inclusive, transported in interstate commerce, articles and/or commodities other than timber and the manufactured products thereof, which have been manufactured, mined, or produced by subsidiaries of said Steel Corporation, or which said subsidiaries own in whole or in part, or in which they, or one or more of them, have an interest, direct or indirect, which articles and/or commodities are exclusive of such articles and/or commodities as are necessary or intended for the use of defendant, to wit:

(1) Bituminous coal which was mined in and from mines owned and controlled by the United States Fuel Company and located at Westville, Illinois, and mines owned and controlled by the

United States Coal & Coke Company and located at Gary, West Virginia, and Lynch, Kentucky, transported in interstate commerce from said mines to the plants of the subsidiary corporations of the Steel Corporation, and owned during all the period of said transportation by one or more of said subsidiaries;

(2) Articles of iron and steel manufacture, of which it transported during the calendar year 1929, a total of 8,048,637 tons, of which approximately 81% was manufactured or produced by subsidiary corporations of the Steel Corporation, or under the authority of one or more of them;

(3) Coke, of which it transported during the calendar year 1929 a total of approximately 2,605,734 tons, of which defendant alleges that it transported approximately 2,455,192 tons in interstate commerce which was manufactured or produced at by-product ovens of the Illinois Steel Company at Gary, Indiana, and Joliet, Illinois, and transported to steel mills owned by the Illinois Steel Company at South Chicago, Illinois, and elsewhere, which coke was owned during all of the period of said transportation by one or more of said subsidiaries of said Steel Corporation;

(4) Cement, of which defendant alleges, it transported in intrastate and interstate commerce, during the calendar year 1929, a total of approximately 1,043,081 tons, of which approximately 82% was manufactured by the Buffington, Indiana, plant owned by the Universal Atlas Cement Company; but denies each and every other allegation in said sub-paragraph contained, and each and every inference sought to be created thereby; and especially defendant denies that it manufactured, mined, or produced, during the period mentioned or at any other time, any of such articles or commodities referred to in said sub-paragraph, or that any of said articles or commodities were manufactured, mined, or produced under its authority, or that it owned in whole or in part, or had any interest, direct or indirect, in any of said articles or commodities.

26. Answering sub-paragraph ninth of said paragraph, defendant admits that certain shipments of coal, which subsidiaries of said Steel Corporation mined during the calendar years 1929 or 1930, and which defendant transported in interstate commerce subsequently to January 1, 1930, notwithstanding that such coal was not necessary or intended for use of defendant and certain shipments of other commodities, other than timber and the manufactured products thereof, produced or manufactured by subsidiaries of said Steel Corporation or under the authority of them, or one or more of them, or which they, or one or more of them, owned in whole or in part, or in which they, or one or more of them, had an interest, which defendant transported in interstate commerce, subsequently to January 1, 1930, are substantially correct as shown on Appendix "B" attached to amended petition herein; but denies each and every other allegation in said sub-paragraph contained, and each and every inference sought to be created thereby; and especially it denies that it manufactured,

mined, or produced, during the period mentioned or at any other time, any of such articles or commodities referred to in said subparagraph, or that any of such articles or commodities were manufactured, mined, or produced under its authority or that it owned, in whole or in part, or had any interest, direct or indirect, in any of such articles or commodities; and it denies that the transportation hereinbefore referred to was of the kind or nature prohibited or forbidden by said section 1, par. (8) of U. S. Code, Title 49, commonly called the "Commodities Clause."

27. Answering paragraph VI, defendant denies each and every allegation contained therein, and specifically, but without limiting in any way the generality of its denial aforesaid, defendant denies that it is not in substance and good faith a bona fide corporation separate from and independent of said Steel Corporation; denies that it is a mere adjunct, branch, department, or instrumentality thereof; denies that, at the time it transported the articles mined, manufactured, or produced by said other subsidiaries of said Steel Corporation, it had or has with respect to all or any of such articles so produced and transported, an interest, direct or indirect, within the meaning of said Act of Congress referred to and called the "Commodities Clause" in the amended petition herein. Further answering, defendant denies that said articles so mined, manufactured, or produced by said manufacturing and producing subsidiaries of said Steel Corporation, and transported as aforesaid by defendant, are or were mined, manufactured, produced, or transported by or under the direction of the same authority, namely, the said Steel Corporation; denies that the transportation of said articles by defendant has been, is, or will be unlawful and in violation of the Act of Congress above referred to and called the "Commodities Clause"; and denies that it has for many years, or otherwise, engaged in unlawful transportation, as in said amended petition alleged, in violation of said Act of Congress above referred to and called the "Commodities Clause", or will continue so to do.

Defendant, further answering said amended petition and as a separate, distinct, and complete defense thereto, alleges:

28. That it is and was at all times mentioned in said amended petition an industrial railroad whose principal service is performed for the subsidiaries of the United States Steel Corporation and consists in the main of intraplant and interplant and interchange and terminal service. As alleged in the petition, the defendant constitutes and is known as the "Chicago Outer Belt Line." It performs an intermediate or interline service between trunk line carriers with which it connects, an interchange service between such carriers and industries on its line other than the subsidiaries of the United States Steel Corporation, and a relatively minor amount of local service for the general public.

29. That by reason of the character of the service aforesaid and of the plants located on the defendant's line, particularly those of

the subsidiaries of the United States Steel Corporation, it would be impracticable for such service to be performed by the different trunk line carriers with which it connects.

30. That the defendant's railroad was constructed and the defendant commenced the operation thereof before the United States Steel Corporation was organized and before it or any of its subsidiaries had acquired any interest in the defendant's stock, and since such acquisition of stock the defendant has continued to operate, and now operates, its railroad in the same manner and as independently of the United States Steel Corporation or any of its subsidiaries as before. It is subject to the jurisdiction of the Interstate Commerce Commission, the Illinois Commerce Commission, and the Public Service Commission of the State of Indiana. Its rates, charges, and service are subject to the regulation of said Commissions and its business is conducted separately from and independently of and is in no way commingled with the business or affairs either of the United States Steel Corporation or any of its subsidiaries. None of its directors, officers, managers, or superintendents is a director or officer of, or in any manner employed by, either the United States Steel Corporation or any of its subsidiaries. Whilst it is a subsidiary of the United States Steel Corporation in the sense of stock ownership alone, it is in no sense a department or agency of the United States Steel Corporation, or any of its subsidiaries, in the conduct of their business or the business of any of them. All of its rates, charges, and divisions of rates are the customary rates and lawful charges established independently of the United States Steel Corporation and its subsidiaries, or any of them. All of its rates and charges are contained in tariffs regularly filed with the various Commissions to whose jurisdictions it is subject, as aforesaid.

31. That the defendant performs its said services for all alike without discrimination and in accordance with its published tariffs and has conducted, and is now conducting, its business and affairs so independently of the said United States Steel Corporation and its subsidiaries, or any of them, that no complaint has ever been made and no ground or cause for complaint now exists, or has existed.

32. That none of the articles or commodities transported by it were either manufactured, mined, or produced by it directly or indirectly or under its authority and it neither owned nor had any interest, directly or indirectly, in said articles or commodities or any of them.

33. That ever since the section of the Act of Congress referred to and called the "Commodities Clause" in the amended petition herein was adopted in 1906, it has been construed by the Department of Justice of the United States, by the Interstate Commerce Commission, and by the Congress to have no application to situations such as described in the amended petition herein; and that in reliance upon such construction of said "Commodities Clause", hundreds of millions of dollars have been invested in the stocks of railroad com-

panies, including defendant, by companies engaged in or interested in manufacturing, in order to obtain proper and efficient transportation for the manufacturing plants served by the said railroad companies in having their products transported to and from the main arteries of interstate commerce.

Defendant, further answering said amended petition and as a second, separate, distinct, and complete defense thereto:

34. Realleges each and every allegation contained in paragraphs "28" to "33", inclusive, of this answer.

35. Alleges that this defendant and numerous persons who are its stockholders and bondholders and citizens of the United States and of the several States thereof will be deprived of liberty and property without due process of law and without just compensation in violation of the Fifth Amendment to the Constitution of the United States if Section 1, Par. (8) of U. S. Code, Title 49, commonly called the "Commodities Clause" is construed to prohibit this defendant from transporting articles and/or commodities of the various manufacturing and mining companies named in said amended petition.

Wherefore, defendant prays that the amended petition herein be dismissed and that the prayer of the petitioner for the issue of a writ of injunction to the defendant be denied, with costs.

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY,
By S. M. ROGERS,
President.
NATHAN L. MILLER,
KEMPER K. KNAPP,
Solicitors for Defendant.

CHARLES S. BELSTERLING,
KNAPP, BEYE, ALLEN, COCHRAN & CUSHING,
Of Counsel.

30 [File endorsement omitted.]

In United States District Court for the Northern District of Illinois, Eastern Division

Equity 10152

UNITED STATES OF AMERICA, PETITIONER

vs.

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY, DEFENDANT

Narrative statement of evidence

Filed Dec. 20, 1935

Be it remembered that heretofore to wit on the 15th day of January, A. D. 1934, being one of the days of said term of said court,

before the Honorable Charles E. Woodward, one of the judges of said court, this cause came on for trial upon the pleadings heretofore filed herein.

Honorable Elmer B. Collins, Special Assistant to the Attorney General, appeared for Plaintiff;

Honorable Burt L. Smelker, Counsel for Interstate Commerce Commission;

Messrs. Kemper K. Knapp, Frank B. Kellogg, Nathan L. Miller, and Charles S. Belsterling, appeared for Defendant.

In the trial of the above entitled cause the evidence taken was in substance as follows:

Offers in evidence

Mr. Smelker offered in evidence Government Exhibits A–1 to 11; B–1 to 46; C–1 to 39; D–1 to 94; E–1 to 58; F–1 to 27; G–1 to 8; H–1 to 6; I–1 to 3 and J–1 to 16 consisting of copies of letters obtained from the files of the defendant.

Mr. Knapp stated that the defendant offered no objection to any of the letters except upon the ground of relevancy. The
31 court thereupon admitted in evidence the said government exhibits subject to objection as to relevancy (Tr. 39).

ALEXANDER F. BANKS was called as a witness on behalf of the Government, and being duly sworn testified as follows:

DIRECT EXAMINATION BY MR. SMELKER

Before I retired from business I was president of the E., J. & E. Railroad from May 1, 1901, to May 1, 1931. During that time we had offices in several different office buildings here in the city of Chicago, the last and present offices being at 208 South La Salle Street (Tr. 50). When the United States Steel Corporation was formed in 1901, it became the owner of the E., J. & E. Railroad through its ownership of the Federal Steel Company; that is, the United States Steel Corporation owned all the capital stock of the Elgin, Joliet & Eastern Railway. Judge E. H. Gary was chairman of the Board of Directors of the Steel Corporation at that time.

Meetings of the presidents of the subsidiaries of the Steel Corporation were called to my attention through the president of the United States Steel Corporation. These meetings were not held at stated times. We might have several during the year. Sometimes they were called by telegram and sometimes by letter. The usual form of the letters was that there would be a meeting of the presidents at such and such a date, "Please advise if you will be in attendance." As to whether I was ever directed to attend those meetings, I presume that sometimes the announcement of the meeting would say "if it is convenient please attend", or "I would like you to attend", I don't know. I did not attend all of these meetings. I at-
32 tended probably half of them, maybe more. The presidents of the subsidiary companies of the United States Steel Cor-

poration were usually present at these meetings, including those subsidiaries named in Appendix A of the amended petition of the Government, such as the Illinois Steel Company, American Bridge Company, American Sheet & Tin Plate Company, National Tube Company, Universal Atlas Cement, United States Fuel Company, United States Coal & Coke Company. I couldn't say if they were all at each meeting, but invitations were sent to them. I should say that the general subjects of discussion at these meetings were in relation to the mill practices and the business of the Steel Corporation—of its manufacturing companies. The general policies of the Elgin, Joliet & Eastern Railway were not discussed at those meetings to my recollection; nor were any individual matters of the Elgin, Joliet & Eastern Railway, for instance, financial matters, discussed at those times (Tr. 51–54). The telegram shown on page 46 of Government Exhibit B from W. J. Filbert to A. F. Banks refers to the presidents' meeting, but the subject of the telegram most assuredly is nothing that would be discussed in the presidents' meeting, that is a general meeting of all of the presidents of the corporation. As to whether, throughout the time I attended these meetings, anything was ever discussed at those meetings concerning the E., J. & E., if they asked me what was the general situation of our business, to show what the road and the industries were doing, general information in regard to the business conditions, etc., but not the financial condition of the road. As to the road's earnings, I might have said the earnings were good last month, or that we earned so much last
33 year, but just as a matter of general information; it was published. As to whether that information was given at the request of the president of the Steel Corporation: In these general meetings everybody would be asked how their general conditions were and how operations were and what the prospect for business was, and so forth, painting a picture. I might go into that, they frequently asked how are other railroads in the west doing, and how is business compared to business for previous years (Tr. 54–57).

Mr. Smelker then questioned the witness concerning the lease of the Chicago, Lake Shore and Eastern Railway by the Elgin, Joliet & Eastern Railway, and read the following from pages 1 and 2 of Exhibit B, being in part a letter dated July 20, 1905, addressed to Judge E. H. Gary, Chairman of the Board of Directors, United States Steel Corporation, from A. F. Banks, President of the E., J. & E.:

"DEAR SIR: I enclose you clipping from the Chicago Tribune of the 19th inst. No notice has been served upon the C., L. S. & E. R. R. up to the present time. As to whether this is simply a sensational newspaper article, I have no means of knowing, but I do feel that our position would be very much stronger if the E., J. & E. would acquire the C., L. S. & E. R. R. either by purchase or lease. Because of the fact that the E., J. & E. business today is that of a common carrier and 75 per cent of its tonnage and revenue is derived from shipments other than those of the United States Steel Corporation

or its constituent companies, were it the owner or lessee of
34 the C., L. S. & E. R. R., the Interstate Commerce Commission could not take the position that the E., J. & E. Road served only the Illinois Steel Corporation, and was therefore only a terminal road, organized for the purpose of securing larger divisions, which is another name for rebate. Besides, the earnings of the C., L. S. & E. Railway Company when spread over the total mileage of the two roads, would not show up so abnormally large.

"I believe that it would be the best thing for the corporation to have the E., J. & E. road assume control, either by purchase or lease, of the C., L. S. & E. road, and operate the C., L. S. & E. road as a part of the E., J. & E. road.

"As to the earnings of the C., L. S. & E. road any interest that the Illinois Steel Company has in the C., L. S. & E. is simply a question of bookkeeping, and Mr. Filbert can devise ways and means of overcoming any difficulty in that direction. Any profits made one way or the other for the corporation as a whole, and how it should be distributed, is a matter that can be determined upon by the corporation; so long as we keep our profits at home the corporation is not the loser.

"I know that in the past you have been opposed to the consolidation of the E., J. & E. and the C., L. S. & E. roads, but did not know but what possibly you might have changed your mind in this matter in view of the improvement and the events of the last year.

Yours truly,

A. F. BANKS, *President.*"

(Tr. 58–60.)

35 The WITNESS. As to why I thought this lease should be made: Some two or three years prior thereto, to the writing of that letter I had recommended and urged the consolidation of the two roads; I was president of both of them. We had separate organizations. I felt it was economical to put the two roads together under the one set of officers. Judge Gary did not agree with me, but I kept at him pretty persistently, and that is the first letter, I think, that I wrote him. Prior to that it was all conversation. As to what was the substance of the clipping referred to in that letter, I think it was in connection with some dispatch from Washington concerning the Illinois Northern Railroad. I cannot be positive about this clipping, but I think it referred to this road in particular and other so-called terminal roads (Tr. 61–62). The Chicago, Lake Shore and Eastern Railway Company ran from South Chicago to Clark Junction, Indiana. It had its own tracks and connection with various railroads, including the Pennsylvania, New York Central, and B. & O. The bulk of its tonnage was tonnage to and from the Illinois Steel Company and the Cement Company. Its capital stock was owned at that time by the Illinois Steel Company (Tr. 62–64). As to whether the divisions received by that road at that time were

comparatively high or low, they were reasonable divisions for the service it performed. When I said in the letter that "the earnings of the C., L. S. & E. Railroad Company when spread over the total mileage of the two roads would not show up so abnormally large", I meant that the C., L. S. & E. performed a terminal service and a road service, and had a tremendous volume of business that
36 made large earnings per mile of road operated (Tr. 64). As to why that situation caused me so much concern, there was talk of terminal railroads, short line railroads all over the United States being put on a switching basis and the switching basis did not pay for the service that we performed. It is true that about that time the Interstate Commerce Commission had made an investigation into the matter of divisions being paid to industrial and short line roads by trunk line roads. It is not a fact that the language of the Commission in this report led me to believe that the time was ripe to have the E., J. & E. lease the C., L. S. & E.; I commenced that some three years before and I wanted to get them together so it could be operated more economically and satisfactorily. It would also have the effect of reducing the earnings per mile. A combination of the two mileages would reduce the earnings per mile (Tr. 65). As to whether the terms I proposed in this lease were modified by Judge Gary: I had numerous discussions with him and finally it was turned over to the lawyers and we all settled it ourselves. We had two roads, both belonging to the corporation to start with, the E., J. & E. and the Chicago, Lake Shore and Eastern, and I do not believe it is possible for you to put up any question where you can ordinarily settle it off-hand and I know there were quite a number of discussions. As to whether there were modifications to my original proposal: Suggestions were made both ways, I guess, while the negotiations were going on (Tr. 65–66). I took up the matter of the lease with Judge Gary because the United States Steel Corporation owned all the stock, and I think it is perfectly natural to talk to the owners about the property in regard to important matters of that kind. If our stockholders had disapproved of it, I most assuredly would not have entered into it. The Board of Directors of the E., J. & E. approved the lease. I took up the matter of
37 the lease with Mr. Filbert because I had occasion to talk to Mr. Filbert; I had gone to Mr. Filbert for advice ever since I had been president and I appreciated his advice and there were a lot of things that I would like to have his advice on. As to whether I took it up with him because he was a Steel Corporation official, it was a matter concerning business matters—I might; yes. He was an official with the steel corporation as its comptroller at that time, and I discussed some of the matters with him. After the lease was put into effect I took up the question of having it modified with Mr. Filbert in 1912 because I didn't feel that we were getting as much of the earnings of the combined properties with the stock of the E., J. & E. as we should have, and that was my opinion

(Tr. 67–68). As to whether I had any conferences in New York with the officials or Chicago with the officials of the Steel Corporation in regard to the modification of this lease, I talked to Mr. Filbert about it and I talked to Judge Gary about it. I think the outcome of those conferences was that the lease was amended. Referring to pages 42 and 43 of Government Exhibit B, being a letter addressed to me as president of the E., J. & E. and to Mr. E. J. Buffington, President of the Illinois Steel Company, dated June 27, 1914, written by Judge Gary, Chairman of the Steel Corporation—now, from that letter the outcome of the conference we had was a modification of the lease, as I read the letter. Mr. Buffington was president of the Illinois Steel Company, who owned the stock of the Chicago, Lake Shore & Eastern Railroad, and he had to treat with the stockholders of the E., J. & E., and Mr. Buffington as a stockholder of the Steel Company as a matter of course had to agree and every stockholder had to agree (Tr. 69). As to whether I could have taken up the matter of amending the lease with my own directors,
38 that is, the directors of the E., J. & E and thus settle the matter without reference to the Steel Corporation: I believe it is customary to give the owner of the property something to say about how the property should be run. It was in their capacity as officers of the Steel Corporation, who owned all of the stock of the E., J. & E., that I discussed the matter with them. As to whether I could have entered into this lease without doing that: The directors of the company during their term of office can make any leases that they want to, that they are authorized to make. I selected the directors of the E., J. & E. at that time. The proxies were sent to me by the owners, United States Steel Corporation, to elect the Board of Directors of the E., J. & E. (Tr. 70). As to whether I took up the matter of modifying the lease with Judge Gary in his capacity as Chairman of the Board of Directors of the Steel Corporation: Yes; I discussed it with him and got his advice, as president of the Board of Directors of the Steel Corporations—the owner of the stock of the railroad (Tr. 71).

Now as to the E., J. & E. and the C., L. S. & E. At the time the E., J. & E. leased the C., L. S. & E., the C., L. S. & E. had certain trackage arrangements with the Chicago & Eastern Illinois Railroad Company. That trackage contract was made many years ago, prior to the formation of the United States Steel Corporation, or the Federal Steel Company. The purpose of that trackage agreement was to allow them to haul their coal and stone, sand and so forth from their mines. I did not make it. Originally that agreement covered that part of the C. & E. I. Railroad running north or practically north of Terre Haute, Indiana. Finally it covered the whole road. It served mines owned by the subsidiaries of the Steel Corporation, after the Steel Corporation was formed. The general terms of that agreement were that the Chicago, Lake Shore

& Eastern had the right to run its freight trains over the
39 tracks of the Chicago & Eastern Illinois Railroad to reach the mines and quarries owned or controlled by subsidiaries of the Steel Corporation, and to haul freight from those mines consigned to subsidiaries of the Steel Corporation. After the E., J. & E. Railroad leased the C., L. S. & E. it had the same privileges that the C., L. S. & E. road had under the trackage agreement with the C. & E. I. (Tr. 71–72).

As to what would have been the cost if the subsidiaries of the Steel Corporation, for instance the Illinois Steel Company, had had to pay the full freight charges on coal originating at mines of the subsidiary coal companies of the Steel Corporation, if this lease had not been in effect: That would be the same rate because it is the published tariff rate. If the E., J. & E. brought any of this coal over the C. & E. I. road for its own use, it would have had to pay the C. & E. I. Railroad its proportion or division of whatever the rate was from the mines to the point on the E. J. & E. road. Now with the agreement in effect they pay so much a train mile for the use of the C. & E. I. road. Then they save more or less than the freight charges would have been in the absence of an agreement. Probably less because we operated our own power and our own train. (Tr. 72–74). As to whether there were any benefits accruing to the subsidiary manufacturing company, say for instance, the Illinois Steel Company, by reason of that trackage agreement: They paid the same freight rates, practically the same freight rates on shipments moving in our trains over our railroad to their plant as they would have paid if somebody else had hauled it from the same point (Tr. 74). As to whether during periods of car shortage, the agreement be to the advantage of the Illinois Steel Company: We were operating over the C. & E. I. railroad, using our own cars to haul this coal that came on to our lines for these industries—
we were not allowed to use our own cars under the terms of
40 the contract to reach any other mines and general business moving from those mines. No; the Illinois Steel Company wouldn't have any advantage over anybody else; we served the mines on our own road as well as the mines that were on the C. & E. I. where we operated. There always was a shortage there, nobody got everything they wanted and everybody was complaining that they didn't get their share as a rule, that is natural. The trackage agreement remained in force after the E., J. & E. leased the C., L. S. & E. I think the contract is in effect today—some changes have been made. It has been modified. The C. & E. I. wished to have the lease amended, I think, in one instance because they wanted more money. It might have been their claim that it was because the conditions, that had changed since the original agreement, made the cost of operating a railroad higher. Referring to page 4, of Government Exhibit C, which is the last page of a letter written by Mr. P. L. Fisher, signed General Auditor of the E., J. & E. written

to me under date of December 16, 1920, in regard to the amendment of the lease: Mr. P. L. Fisher was our General Auditor. That letter was written in connection with the revamping or changing of this trackage agreement. The note at the bottom of that letter reads:

"Memo. New York 12/20/20 Judge Gary says O. K. to offer C. & E. I. one cent per ton in addition to regular trackage rate equal to an increase of about fifty thousand per year. See Memo dated 6/12/21. A. F. B.".

I probably wrote that note (Tr. 74–77). As to why I took up the matter of amending the lease with Judge Gary: The C. & E. I. Railroad was asking for a change in the lease—that might have been when the C. & E. I. Railroad was going out of the hands of a receiver and the new company was being formed and the new company would not have to take over the old lease unless they wanted to. I don't know about that, I discussed that with Judge Gary because it was an important matter, the Steel Corporation was a stockholder of the E., J. & E. railroad. I wanted his opinion,
41 just as I would go to my lawyer or somebody else whom I thought could give me good advice (Tr. 77).

I recall the proposition of Judge Gary at that time to get an option for trackage over the Chicago, Terre Haute & Southeastern. I first suggested to Judge Gary getting that option. He may have suggested that I get an option so as to make it binding by paying a sum for it (Tr. 77–78). As to what was the purpose of getting that option: I didn't know whether I could renew the contract with the C. & E. I. and therefore, found other ways of getting in there rather than build. The C. T. H. & S. E. was then a subsidiary of the Chicago, Milwaukee & St. Paul Railroad of which Mr. H. E. Byram was president at the time. The negotiations with Mr. Byram in respect to trackage rights over the C. T. H. & S. E. progressed far enough to draw up a contract to use his railroad, which was never executed; because we made, renewed or made a new contract with the C. & E. I. I couldn't state the terms of the new contract unless you brought it in here to me (Tr. 78). Referring to page 37 of the Government's Exhibit C, being a letter dated October 18, 1922, to Mr. W. J. Jackson, President of the Chicago & Eastern Illinois Railway Company, Chicago, written by me as President of the Chicago, Lake Shore & Eastern, and also of the E. J. & E.: I can't remember what the terms of the amendment to the agreement were. The letter was in fact an offer, my final offer to the C. & E. I. at that time and that offer was accepted under date of October 20, 1922 (Tr. 79).

Referring to pages 31 and 32 of Government Exhibit C, being a letter dated June 28, 1922, addressed to "my dear Ed", and signed by me, and down in the corner, left-hand corner of the second page is "Mr. E. Shearson, Shearson, Hamill & Company, 71 Broadway, New York": 'Dear Ed' was Mr. Edward Shearson, member of the

firm of Shearson, Hamill & Company, of New York. He
42 was formerly an officer of the Steel Corporation. In the first year, I think he was comptroller, but he was one of the directors of the C. & E. I. Railroad and as a director wrote me that letter.

Q. This letter gives a summary of the C. & E. I. earnings on business derived from the subsidiary companies named in the letter, among which are the American Sheet & Tin Plate Company, American Steel & Wire Company, the Illinois Steel Company and others, and the earnings of the C. & E. I. on business derived from the subsidiaries named in the letter, subsidiaries of the Steel Corporation, amounted to $1,330,003, can you tell me, Mr. Banks, why Mr. Shearson wanted that information?

A. What he wanted it for I don't know; he was one of the directors of the C. & E. I. railroad and asked me if I could get it for him. I asked some one to get it for me and they got it from the different constituent companies, I guess (Tr. 80–81).

His only interest, then, was as a director of the C. & E. I. Railroad. Shearson, Hammill & Company are stock brokers in New York; Mr. Shearson was a large owner in the C. & E. I. and represented on the Board large interests, so I understood. I have no first hand knowledge of it. Referring to page 33 of Government's Exhibit C, being a letter written to me under date of June 29, 1922, and signed "Ed": This refers to the other letter that you have just read. He was very anxious that we should continue our contract for trackage rights over the C. & E. I. Railroad as a director of the C. & E. I. Railroad. The fact that the Steel Corporation controlled through its subsidiaries a large amount of traffic over the C. & E. I. was not urged to them as a good reason why the trackage agreement should not be canceled, not that I ever heard of (Tr. 81–82). As to whether that fact, as well as the option with the C. T. H. & S. E. was made known to them, I have no recollection of any such conversation, talk or letter of that kind. As to why I took up the matter of amending this agreement with Judge Gary: As I have previously stated, I discussed many
43 things and got the Judge's advice on it. Possibly I would not have entered into this amendment of the lease without the approval of Judge Gary—possibly would have made some other arrangements. As to whether I could have made any other arrangements without the approval of Judge Cary: I made most of them without his approval. But this one in particular—I would have been governed very largely by the Judge's opinion in a matter of this kind (Tr. 82).

Referring to page 2 of Government's Exhibit D, which is a copy of a Resolution of the Finance Committee of the Steel Corporation referred to in and attached to a letter dated May 1, 1903, addressed to me as President of the E. J. & E. and signed by Mr. C. M. Schwab president, United States Steel Corporation, dated

May 1, 1903: The purpose of that Resolution was to keep the Corporation informed of the capital expenditures of the E. J. & E. and other subsidiaries proposed or authorized over certain sums. The effect of that resolution so far as the E. J. & E. was concerned was that we made reports to them of money that we probably wanted to expend over the coming year on a general program or something of that kind. I have stated that I reported to the Steel Corporation all purchases in substantial amounts over $10,000 or $5,000 in some cases—made chargeable to capital account, and that there were some that I obtained the approval of the Steel Corporation before I made the expenditure (Tr. 84, 88). As to why I took those matters up with the President, Mr. Gary, or Chairman of the Steel Corporation, as I have stated before, the Steel Corporation owns our stock and I don't make large expenditures without discussing the matter with Judge Gary or asking for an appropriation. And as to the large amounts I obtained approval first. I guess I have made expenditures that were pretty large before I
44 asked for authority to do it, including those that were chargeable to capital account, but we always put up an appropriation which was approved. Where it was large enough to require appropriation, before I could make the expenditure I put up the appropriation. That appropriation was recommended by the Steel Corporation. It always came back recommended, I think was the word, I am not sure, or approved, one of the two (Tr. 88–89).

Concerning the clearance account: My recollection was that the auditors of all the subsidiary companies of the Steel Corporation, including the E., J. & E., got together down in New York and tried to arrange for an easy, workmanlike way of taking care of subsidiary companies' business (Tr. 80). As to what use the E., J. & E. made of that clearance account: The details of it probably could be described better by somebody else, but in general it was to clear the account between subsidiary companies and save the making of bills one to the other, clearing it just the same, I presume, as your grain trades or bank clearances are settled, something of that kind. But it had to do with the intercompany purchases more than anything else—nothing so far as transportation was concerned (Tr. 90).

The advance account was for the same purpose. It represents moneys that we might have on deposit with the United States Steel Corporation. We kept money on deposit with the United States Steel Corporation subject to our own call whenever we want to withdraw it. That money is earnings of the E., J. & E., other than funds needed for the daily running expenses of the carrier (Tr. 90–91). As to how we got our authority for making the deposits: We had not any more authority for that than a deposit in the bank. As to whether we were directed by the Steel Corporation from time
45 to time to make deposits in this account: They have asked us from time to time to make deposits in this account, but I think in the majority of cases we made the deposits and notified them, or asked them if we could make them (Tr. 91–92).

As to how and by whom the regular dividends to be declared by the E., J. & E. are determined: As a rule I discussed it with Mr. Filbert or Judge Gary, telling them we had so much money on hand, and recommended the dividend. I don't know that any one ever connected with the Steel Corporation ever made a recommendation direct to me on a dividend, I have no recollection of that, unless it was after discussion with them. I think I have issued dividends without first discussing the matter with Judge Gary, but I generally talked it over beforehand. These suggestions I also made for extra dividends (Tr. 92). As to whether I ever made them without first discussing them with Judge Gary: I never made them except on my own suggestion that such extra dividends should be paid. Before they were paid Judge Gary would say: "If you think you can afford it, why, no objection to it that I know of." I discussed the matter of dividends with Mr. Filbert because he was the comptroller of the corporation; I frequently went to him for advice. He knew what our earnings had been and I discussed it with him, asked him what he thought about our declaring an extra dividend this year, or I would say to him "I propose to do so and so, what do you think of it?" This would probably be two or three months before the dividend meeting. As to what action, if any, the E., J. & E. Board of Directors took in the matter of dividends: I would suggest what the dividends are and they passed a resolution authorizing the payment. That was after I had taken the matter up
46 with Judge Gary or Mr. Filbert,—after, when I did take it up with them, if I did take it up with them. I say, if I had discussed it with them we then declared the dividend afterwards (Tr. 93–94).

Referring now to the salaries paid division counsel back in 1920, Knapp & Campbell was counsel for the E., J. & E. at that time. As to how their salaries were paid at that time: I couldn't say whether it was by voucher or on the pay roll or how, I don't remember on what date. Referring to Government Exhibit H, page 1, which is a letter to me from Mr. Filbert dated February 16, 1920, I recall after reading that letter, that other subsidiaries of the Steel Corporation were represented by Knapp & Campbell—Illinois Steel Company and probably all of them in this District. I don't know; I couldn't name them offhand. As to who paid their salaries: Each one paid a certain agreed percentage. As to who made the allotment: I presume the General Counsel of the Steel Corporation probably made the arrangement with them, I don't know. As to whether the E., J. & E. selected its own counsel back at that time: Mr. Knapp was counsel when I was made President. Prior to that time I don't know how it was. He has been there ever since (Tr. 94–95).

CROSS EXAMINATION BY MR. KNAPP

I first formed a connection with the E., J. & E. Railroad August 15, 1893. I became president of the Company May 1, 1901, and re-

mained president until May 1, 1931. Before I went with the E., J. & E. I was Soliciting Agent for a railroad, General Freight Agent and Traffic Manager. When I went with the E., J. & E. in the first instance, I continued in the same line as General Agent, General Freight agent, and Traffic Manager. During a portion of the time I have been president of the Railroad Company I have likewise had a vice president (Tr. 172). The railroad
47 company has always had a secretary, a treasurer and a Purchasing Agent (Tr. 172–173).

The freight car equipment of the railroad company consists of about 11,000 to 12,000 cars. It has about 275 or 280 freight engines. It does no pasenger business. In normal times it has from 5,000 up to 7,200 or 7,300 employees, engaged in ordinary lines of railroad transportation, clerks, engineers, firemen, trainmen, section men and car men. The company owns car shops located at Joliet (Tr. 173). The E., J. & E. in its organization has a general superintendent. The general superintendent has charge of the transportation, the operation of the trains and such other duties as are assigned to him. We have an assistant superintendent and one division superintendent. We have two divisions on the road—the Joliet Division and Gary Division. As to whether the United States Steel Corporation ever comes in contact with any part of this organization, in its management, discipline or control: No sir. The United States Steel Corporation or any one connected with it has never attempted to give any orders or suggestions or directions of any kind to the E., J. & E. organization. If they had any communication of any kind to make with reference to the E., J. & E. road, they would make it to the president of the railroad. That has been so all the time I have known about the railroad (Tr. 176–178).

At none of the meetings of the presidents of the subsidiaries down in New York, that I ever attended, was there any suggestion made to me about the management or operation of the railroad, or that had any connection with how I should run our trains, or how we should make our freight rates, or how we should make our divisions, or whether we should make any certain improvement or not (Tr. 178).

48 The railroad has in the last ten years, or fifteen or 20 years, built additional track, so as to make it a double track road. The thought of making or building that double track probably arose with our traffic department first. Then it came to me. I decided whether it should be done or not. If it became necessary at any time to have any additional car equipment that suggestion would probably arise from the transportation department or the mechanical department up to a vice president, and in recent years, then to me. The president decided whether additional cars should be acquired or not (Tr. 179).

Reference was also made to the C., L. S. & E. lease and I explained quite fully the negotiations that took place at that time. I had fre-

quent and serious discussion with Mr. Buffington about the terms of that lease. He was persistent in attempting to obtain the best terms he could for his company. I was likewise a little persistent with regard to the interest of the E., J. & E. road. That is a marked characteristic of the contact which I have had with the representatives of the other subsidiary companies. I find the presidents of the other subsidiary companies always interested in looking out for the interest of their particular companies. I have never found them any other way. And when I met them, I was trying to take care of my company the best I knew how (Tr. 179–180).

Going on to appropriations, as I understand it, the appropriation is the name given to a request for permission to spend money. As to where the appropriation arises, or originates: It depends on what the proposed expenditure is to be; it may originate with the superintendent of motive power for locomotives, or transportation, or in the engineering department for side tracks or other improvements to the roadbed. They determine that they want certain things and then prepare an appropriation of the cost and so forth, and pass it on to the proper officers, and then it would come up to
49 the vice president to be looked all over, and when they get the approval of those as to what they want, they recommend it, and it comes to me for approval, and if I approve it then the appropriation is put in a uniform way and forwarded to the Steel Corporation for their recommendation as to whether we should spend the money. If I do not approve it, it does not go through. That appropriation would be given a number and if we did the work all the expenditures would be charged against that particular appropriation number. During the time that I was president of the E., J. & E. Railway we thought the railway was maintained first class. In our opinion the railway was well equipped, during my administration, to serve all of the members of the public who desired to ship over it. As to whether the Steel Corporation ever refused to approve an appropriation which I had sent down to them stating that I thought the expenditure was necessary for the uses of the railway company: If they did, I never knew, or I have no recollection of it. I am afraid I have, a good many times, spent money in the way of capital expenditure, that is, an improvement, before I have had the approval of the Steel Corporation for those capital expenditures which I usually sent down to them. I can give a particular illustration: In the building of Gary, we had no idea how much money we were going to spend or what it was going to take or what our requirements would be in the beginning, when we started in. I think I had an appropriation of something like $30,000, on account of preliminary work, and I spent probably several million dollars before I got through, and charged it to that one appropriation (Tr. 180–183).

In the petition in this case, I find the following:

"The Steel Corporation requires that all important con-
50 tracts, leases, and agreements which the defendant and said other subsidiaries contemplate entering into, be submitted to certain officials of the Steel Corporation for their consideration and approval, and the terms of such contracts and agreements are generally prescribed by the officials of the Steel Corporation."

As to whether that charge is true, so far as the E., J. & E. road is concerned: I have discussed some contracts with the Steel Corporation officials, and my belief is that no official of the corporation has ever read a contract through before or after it was signed. I have discussed certain matters in regard to it, and that is only in a few instances. I think those instances are our contract for the leasing of the C., L. S. & E. Railroad was discussed, but I do not believe that Judge Gary as Chairman of the Corporation read that contract through in its entirety. That contract was formulated in New York and Chicago; we had meetings in both places. The original drafts were made in Chicago between you (Mr. Knapp) and me working together on the contracts. And then Mr. Buffington took part in those discussions. Then the draft of the contract was taken to New York and used as a convenient means of discussing certain features of it. The features of the contract that were discussed down in New York related wholly to the question of price or rental that should be paid by the lessee to the lessor. The contract itself is quite an extensive contract occupying many printed pages, and related to the ordinary relations between a railroad lessor and railway lessee, involving many details (Tr. 183–185).

As to what is the custom with my company with regard to submitting contracts to our Board of Directors: They are submitted annually; all the contracts are listed and numbered and are submitted to the Board of Directors and at the stockholders' meeting, as I recollect it. I have before me a copy, certified by the
51 Secretary of the Corporation, of a Resolution adopted with reference to contracts at each annual meeting, from June 8, 1910, to June 14, 1933—And further explaining the character of these documents, I read from the one of June 1910:

"The President reported to the meeting that since the last Annual Meeting of Directors the following agreements had been executed by the president and secretary of the company" (Tr. 185–186).

And then follows a list of contracts identified by number, date, and the name of the party with whom the contract was executed, and very briefly the subject matter, and then follows:

"Whereupon, the following Resolution was introduced and on motion duly seconded was adopted:

"Resolved: That the Board of Directors hereby approve the action of the President and Secretary of the Company in executing the several agreements just reported to the meeting, and all of said agreements are hereby ratified and confirmed."

At your request I read over those various resolutions and examined carefully the list of contracts there referred to. As to how many of those contracts were ever taken up with any one representing the United States Steel Corporation: No. 788, June 1, 1909, was the lease of the Chicago, Lake Shore & Eastern to the E., J. & E. Railway and that was discussed in New York with the officials of the Steel Corporation and Mr. Buffington, President of the Illinois Steel Company, the Steel Company being the owner of the stock of the Chicago, Lake Shore & Eastern Railroad. I have no recollection of discussing in New York any contract I made for equipment except where we were buying equipment under which we were issuing equipment bonds, and that might have been discussed (Tr. 186–187).

Before the contract was entered into the plan or project of
52 buying equipment was discussed with me in New York. But the contract itself then, when it was determined to buy the equipment never was discussed. The contracts covering none of those matters, except the C., L. S. & E. lease that I mentioned, the contracts themselves were never submitted to any one representing the United States Steel Corporation, not to my knowledge or best recollection. They are in the list here except the trackage for the C. & E. I. There are in the list, according to the recapitulation here, 2,313 contracts, and those that I have mentioned out of that 2,313 are the only ones that I discussed with any one representing the United States Steel Corporation, to the best of my recollection. (Whereupon the last mentioned document was accordingly marked "Defendant's Exhibit 1", for identification.) I have before me now a separate resolution. (Whereupon the last mentioned document was accordingly marked "Defendant's Exhibit 2", for identification.) This likewise is identified by the Secretary of the E., J. & E., certified to as being a correct copy, and it reads:

"Whereupon the following Resolution was introduced, and on motion duly seconded was unanimously adopted:

"Resolved, that the act of the president of this company in agreeing that if the Chicago & Eastern Illinois Railway Company would assume and adopt the agreement dated February 1, 1909, and expiring January 31, 1959, by which the Chicago & Eastern Illinois Railway Company granted trackage rights to the Chicago, Lake Shore and Eastern Railway Company, then this company would agree to pay to the said Chicago & Eastern Illinois Railroad Company, in addition to the compensation as provided in said agreement, the further sum of two cents (2¢) per ton on all freight handled by this company over the railroad described in said
53 agreement from November 1, 1922, until the expiration of said agreement on January 31, 1959, be and the same is hereby approved, ratified, and confirmed" (Tr. 187–189).

I remember the passing of that Resolution, and that was not handled in the omnibus way that the other resolutions were han-

dled—that contract was not handled in the omnibus way. I have no recollection of ever submitting any of those 2313 contracts, with the exceptions that I mentioned, in any form to any one representing the United States Steel Corporation before the contracts were executed. I never had any directions as to what should be put into such contracts, with the exceptions that we have talked about. Those contracts were prepared in Chicago, by the Law Department of the Elgin, Joliet & Eastern Railway, and they were examined by me or our vice president and signed if satisfactory (Tr. 189–190).

Referring to the C. & E. I. trackage agreement—the "C. & E. I." Railway Company is the Chicago & Eastern Illinois Railway Company. As to what was the occasion of putting in the Resolution that I read a moment ago about the C. & E. I. adopting a certain lease: The road had been in the hands of a receiver and a new company was formed or organized that would take possession of it when it passed out of receivership. And the general understanding was that the new company could either adopt that trackage agreement or not adopt it. I think I said in my direct examination that Mr. Jackson, who was president of the C. & E. I., wanted more money. And then started a quite long period of negotiations with him (Tr. 190–191). My staff and I made a careful study of the situation. We had people in our organization make calculations and estimates to determine whether the rate then being paid to the C. & E. I. was a fair and reasonable rate or not. We on our side and our advisers were of the opinion that we were then paying a fair and reasonable rate.

54 Mr. Jackson claimed that his own earnings were low, and he wanted to increase them, and he claimed that maintenance expenses on his road had increased on account of the price of labor, materials and so forth. While it was uncertain whether or not we would come to an agreement, I did this in the way of protecting the E., J. & E. Railway: The Chicago Milwaukee & St. Paul Railroad, which owns or leases, I do not know which, or where the ownership is, or what the lease arrangements are, what was called the Chicago, Terre Haute & Southeastern Railroad, that connected with the E., J. & E. Railway at Chicago Heights, at the same city in which the Chicago & Eastern Illinois connects with the E., J. & E. Railway, and it ran down almost parallel to the Chicago & Eastern Illinois and could reach some of the mines owned by subsidiaries of the Steel Corporation in the territory known as the Danville District, and could reach all of them by building short distances: so I approached Mr. Byram, President of the Milwaukee & St. Paul on the question of making a trackage agreement with him and he was quite anxious for it, so we entered into negotiations for a contract. My recollection is that we drew up a contract, but I won't be absolutely positive whether a contract was actually written up, but I believe it was, although I am not sure. Anyhow, it was agreed upon, that he made us a price of what we were willing and had been paying,

I believe, to the C. & E. I. Railroad, that I am not quite positive of. The rental price was a price to be paid to him. It was what we had been paying to the C. & E. I. Railroad for the use of their single track lines. And when this contract was first made with the C. & E. I. over its single track—a portion of it was single track and we had one rate for that, and when they double tracked the road,
55 my recollection is we paid them an increased rate. Mr. Jackson did not want to run us off the C. & E. I. Railroad, and we computed and got up figures and showed him that the rental he was receiving from us for our trackage rights over the C. & E. I. practically paid every expense of the maintenance of his tracks over which we operated; and therefore, it was a profitable thing for him. We had, as you know, numerous discussions with him, trying to trade, and it was not convenient to change from the C. & E. I. to the Chicago, Milwaukee & St. Paul or this road, the Chicago, Terre Haute & Southeastern, because it would necessitate the building of several spurs to the Chicago, Terre Haute & Southeastern, to the mines and quarries down in the Danville District. Finally, after much talking and so forth; we compromised by agreeing to pay the C. & E. I. Railroad two cents a ton in addition to the trackage that we were paying. I discussed that matter with Judge Gary and the Judge said, "Would it be more convenient for you to remain as you are", and I told him "Yes", and then he said, "I think I would pay it rather than to make a change." And instead of making a new contract on that I think we passed letters, that is my recollection, instead of making a new contract. Those letters were shown to me just the other day (Tr. 193–196).

I stated yesterday that during the time I was president of the E., J. & E. that company had as its officers here a president, a vice president, secretary, treasurer, purchasing agent, general superintendent, assistant superintendent, superintendent of the Joliet Division, superintendent of the Gary Division; none of those men were officers of or employed by or connected with the United States Steel Corporation in any way. They were not connected in any way with any of the subsidiary companies of the Steel Corporation.

During the time that I was president of the E., J. & E. Rail-
56 road—none of the railroad officers were connected with in any way the United States Steel Corporation. I am referring of course now to officers of the road who were engaged in the operation or management of the road. The offices of the United States Steel Corporation were in New York. The offices of the E., J. & E. were in Chicago or Joliet on the line of the road. The United States Steel Corporation was not an operating company. As I understand it it is a holding company, holding stocks of various companies. The E., J. & E. Railway Company held regular annual stockholders' meetings. At those stockholders' meetings, the usual report made to stockholders was made by myself or by the officers and approved by the stockholders. The directors were elected at the stockholders'

meeting, and they in turn elected the officers of the E., J. & E. railroad. When they met as directors they elected officers of the E., J. & E. railroad. All of the directors of the E., J. & E. Railway were selected by myself after I became president, and recommended to the stockholders at the meeting. I named the officers for the directors to vote upon. I recommended to the directors and they usually followed by recommendation. There never was any exception (Tr. 197–200).

Now reference was made at considerable length to the lease of the C., L. S. & E. to the E., J. & E., the effect of that lease on the operation expense or efficiency was that it enabled us to have one train operate over both roads where you know theretofore the C., L. S. & E. operated along there under their trackage arrangement from the E., J. & E. and it would run its trains say between South Chicago and Joliet, and the E., J. & E. was likewise operating over the same track—over its own tracks; we have two sets of officers, two sets of accounts and everything entirely separate. I urged the consol-
57 idation or leasing of the C., L. S. & E. to the E., J. & E. to have better operating conditions, the elimination of separate officers, elimination of the duplication of a lot of work which was an economic proposition. It saved expense and when we were—when we did make the lease, it put all of the stations on the Lake Shore & Eastern as stations of the E., J. & E. putting our rates, divisions and everything of that kind on the C., L. S. & E. and there were no changes made in the situation on the east end of the line. As to how the division of rates that were enforced for the E., J. & E. after the lease applied on the old line of the C., L. S. & E.: You group your stations on the railroad for divisions, our divisions applicable to all stations east of Joliet, or to the east and over to Gary and South Chicago, are the same and the same with all railroads. When we leased the C., L. S. & E. to the E., J. & E. the C., L. S. & E., ceased to operate and the stations on the C., L. S. & E. became stations of the E., J. & E. and the same divisions applied to those stations as applied to the stations of the E., J. & E. There were not two divisions, it became a part and parcel of the E., J. & E. in its operation, its divisions, and in every other way (Tr. 200–202). Referring to Government Exhibit D, page 6, I remember that letter. Yes. It indicates as being on the letter head of the United States Steel Corporation, dated November 4, 1912, signed by Mr. J. A. Farrel, president, and directed to Mr. A. F. Banks, president of the Elgin, Joliet & Eastern Railway Company, Chicago, Illinois:

"DEAR SIR: Replying to yours of the 1st inst. regarding circular letter to all presidents dated October 30th:

"In sending out general letters we appreciate that same are not always directly applicable to some company, but in order that all of our officials may be in an intelligent position respect-
58 ing matters of policy, and our wishes and ideas on many subjects that may not have been taken up with each president

individually, it is our custom to send these circular letters to all without exception, and in doing so it is, of course, not expected that officials not expressly interested will feel that such letters are especially intended for them" (Tr. 202–203).

I had oral communication with Mr. Farrell on the same subject. I said to him "we are getting letters in here, general letters that have nothing to do with transportation or railroads or anything of that kind; we are getting letters in regard to repairs to blast furnaces or something of that kind", and he said "they are not intended for you. We send out these general letters in here which are, most of them, for the manufacturing companies and therefore there isn't any reason why you should pay any attention or take them into consideration at all" (Tr. 203).

I was asked about a letter which I wrote in answer to a request from Mr. Shearson and in that letter I reported some information that I had gathered about the amount of freight or freight rates, the amount of freight which was paid in a certain year to the Chicago & Eastern Illinois Railroad by subsidiaries of the United States Steel Corporation; as to whether the fact that the subsidiaries of the United States Steel Corporation were paying large amounts of freight for goods transported over the Chicago & Eastern Illinois was used by me in any way as a threat in my negotiations with Mr. Shearson: Most assuredly not. This information that I got was gathered especially for the purpose of answering Mr. Shearson's inquiry. Mr. Shearson was director in the C. & E. I. Railroad, and, I think, he and his frends owned a very large interest at that time; and what he wanted with the information I
59 have no idea, but I asked Mr. Bond, I think, if he could get it and he compiled it and I sent it on to him. All done at Mr. Shearson's request and not at mine (Tr. 203–204).

No railroad has a right to transport any freight unless they have a regular tariff in effect. The Elgin, Joliet & Eastern Railway Company have tariffs on file with the United States Interstate Commerce Commission and with the commissions of Indiana and Illinois, covering all types of service that it performed. They have to file a tariff before they can legally transport any freight. The handling and filing of tariffs was done by the Traffic Department, and as there were no complaints or exceptions they were absolutely—the rules and regulations of these legislative bodies were carried out (Tr. 205). So far as I know it collected such rates for any service performed. Before the lease from the Chicago, Lake Shore & Eastern to the E., J. & E. each road had a set of tariffs on file. Each road filed its own tariff separately. After the lease there was only one road to file tariffs; and that was the Elgin, Joliet & Eastern which filed its tariff. I have testified before that I took up with the officers of the United States Steel Corporation, seeking their advice, the C., L. S. & E. lease, the E., J. & E. and the Chicago & Eastern Illinois traffic contract and large expenditures for capital account and divi-

dends (Tr. 207–208). As to whether I remember anything else, any other class of matters that I took up with New York, with the Steel Corporation or any officials in connection with these contracts and expenditure for capital account and the affairs of the road generally: Generally when I was in New York I would talk about our business conditions, trying to give the one stockholder of the road a picture of what was going on, and what the prospects for business were and frequently talked about those matters. I also testified that I did not take up and seek the advice of the officials of the Steel Corporation in matters regarding the maintenance of the road, the
60 manner of operating the railroad, the character of service which the railroad would perform, and the rates which it should make, and the division of rates which it should make. As to why I didn't take up these operating matters with the United States Steel Corporation or any of its subsidiaries: I thought I was competent to run the affairs of the E., J. & E. myself, together with the officials that I had. I had been in the railroad business all of my life. None of the officials of the United States Steel Corporation had been in the railroad business any considerable length of time, to my knowledge (Tr. 208–209). As to what kind of an organization we had to run the road: I think one of the best in the country (Tr. 210).

REDIRECT EXAMINATION BY MR. COLLINS

Referring to the lease by the E., J. & E. of the C., L. S. & E.: I spoke of having had some discussion with Judge Gary and others before the lease went into effect. I think there were numerous discussions. There were changes made in the terms of the lease between the time of my first discussion of it with Judge Gary and other officials of the Steel Corporation and the time it went into effect finally (Tr. 210–211).

Referring to the document in which there were listed 2,313 contracts entered into by the E., J. & E. Railroad between 1910 and 1933: According to our records the contracts are numbered numerically and it shows the entire list of contracts submitted to the directors at their annual meeting, and approved by the directors. That list constitutes all contracts that were entered into during that period, so far as I know. As to what are the most important contracts of that list, from the standpoint of the amount of
61 money involved: Probably the building of a large number of cars, or the purchase of a large number of locomotives would probably run into the most money if it is a money proposition. That would be the most important. My recollection is there was one contract covering quite a large number of cars that ran into a considerable amount of money and that would be the most important one and then I possibly purchased a large number of locomotives at one time, and that would run into the most money. Some of that equipment was under an equipment trust but not all of it. I do not believe that I had any equipment trust on locomotives but there

was on the cars, and I think we had two series of equipment trusts during this period. Before those contracts, involving the purchase of equipment or building of equipment, I discussed the matter with Judge Gary or Mr. Filbert or other officials of the Steel Corporation, and the contracts were entered into after those discussions (Tr. 211–215).

We had discussions with various officials of the Steel Corporation prior to the execution of the lease of the C., L. S. & E. by the E., J. & E. That was also true of the trackage agreement with the C. & E. I. I think that I consulted with Judge Gary and Mr. Filbert getting their advice and their opinion. The trackage agreement was a renewal of an agreement that we had. As to when the agreement was originally made: I cannot give you the date from memory. The Chicago, Lake Shore & Eastern, its predecessor the Calumet and Blue Island, I believe, had a contract for trackage rights over the C. & E. I. road before the formation of the Steel Corporation. The renewal of that contract was an important matter to the E., J. & E. The lease of the C., L. S. & E. to the E., J.

62 & E. was an important contract. I think I stated that it was important on account of its operation. There were perhaps several of these numerous contracts that we did discuss, before their final execution, with the officials of the Steel Corporation. We discussed them and the contracts were entered into by me after the discussions (Tr. 215–217). Some of the contracts shown on this list marked for identification, Defendant's Exhibit 1, involved the expenditure of money. As to whether the E., J. & E. Railroad submitted to the Steel Corporation its customary request for an appropriation to cover the amount involved in these contracts: Depending upon the amount of money that was involved in it as an expenditure and if it were for capital account, an appropriation would be gotten up and submitted to New York. That would be true with respect to each contract here that involved the expenditure above $5,000 or $10,000 depending on the period, and the appropriation would be for capital account. No maintenance expenditures were submitted to New York or discussed with them. As to whether there are in here many contracts involving amounts that are less than the minimum stated in the circular letters received by me from the United States Steel Corporation: I suppose there are a number of them, a large number of them. I have stated we sent no appropriation down to them for their recommendation or approval under $5,000 or $10,000 as the case may be. We did send the other appropriations for capital expenditures over that amount for approval. Sometimes the appropriation would be sent after the money had been spent (Tr. 218–219).

Referring to page 179, volume I, of the testimony taken yesterday, concerning additional or double track built by the E., J. & E.

63 road since 1910: I stated that the decision to build additional track was made by me and probably originated with our Traffic

Department—originated with our officials. Then, it was passed up to me for approval. Then the appropriation was sent to New York as all appropriations over that—that was previously stated as to the amount, was sent down for recommendations and approval by the Steel Corporation, that is, the capital expenditures.

These contracts were approved by the Directors annually. As to whether we have stated times or dates for these annual meetings: Yes; it is stated in our By-laws when the annual meetings are held, I think in June, from my recollection. We would enter into these contracts, perhaps every month of the year, and probably every day (Tr. 219–221). As to whether a contract entered into during July would be approved by the directors of the E., J. & E. the following June: That would be the procedure, and I don't know of any contracts that were approved at meetings held in between. It may have been, but if they were the record will show it. As to whether a contract made say in July, would have been executed and the project involved carried out previous to the approval of it by the Directors the following June: Yes, sir; there might be a case, I don't know; there might be an occasion in here where you make a contract with somebody and we would want it approved by the Board of Directors, in which case we might call a special meeting of the Board to approve it. But the other was the general procedure, the general plan, reporting these contracts in there and they are approved by the Board (Tr. 221–222). As to whether contracts involving a capital expenditure even though not approved by E., J. & E. Directors until the following June after their execution in the previous July, had already been handled through the
64 Steel Corporation on a request for an appropriation: Contracts that were made became effective when I signed them as president and the Secretary signed them as secretary for the company. My request for an appropriation would be sent in to the Steel Corporation if it was a capital expenditure. The contract would probably have been signed before the requisition was sent in, or it may be signed afterward. When I signed it it was effective. As to whether the project was not carried out until the request for the appropriation had been passed up to the Steel Corporation: If we made the contract and I had signed it we would carry it out (Tr. 223–224).

I spoke yesterday of a lot of building that was done and a lot of money spent at Gary. I might have referred to it in the building of Gary, that is, the steel plant. I probably had an appropriation of some $30,000 and when I finished I had spent millions for the Chicago, Lake Shore & Eastern Railroad; they owned the tracks down at Gary, and that expenditure was made for the Chicago, Lake Shore & Eastern before the lease of the Chicago, Lake Shore & Eastern was made to the E., J. & E. Railroad. It was the Chicago, Lake Shore & Eastern that made the expenditures at Gary, before the lease of the C., L. S. & E to the E., J. & E. was consummated. The

$30,000 appropriation which I said I began with was covered by a requisition for an appropriation. A request to the Steel Corporation by the C., L. S. & E. Railroad (Tr. 224–226).

As to whether I appointed the directors of the E., J. & E. Railroad: I gave a list of them to the stockholders and I voted all of the stock at the stockholders' meeting. The names proposed by
65 me as directors of the E., J. & E. were the names of parties who were officials or employees of the E., J. & E. or the C., L. S. & E. with the exception that Mr. Warren Smith was president of the South Chicago Savings Bank, and he was a director at one time. I can't remember the date. Mr. Arthur Reynolds and Mr. Ralph Van Vechten of the Continental Bank, I selected all three of them as directors, and if I selected them I did not argue with myself whether they be elected or not. Then as to the other directors, they were employees of the E., J. & E. Yes, every one is an official or an employee of the E., J. & E., other than the ones I mentioned. Judge Gary was a director up to 1917 or '18, I have forgotten the date, or 1919, whatever it was. And he was also connected with the Steel Corporation too. Mr. Trimble was secretary and treasurer of the Steel Corporation, and Director of the E., J. & E., up to the time the resignation took effect and when these other directors took their places. That was about 1918 or '19, somewhere in there, I don't just remember the date. J. A. Farrell, president of the United States Steel Corporation, was a director, ending about the same time, and Mr. W. J. Filbert, also an official of the Steel Corporation, was a director of the E., J. & E. His term ended at the same time. Other than the names I have mentioned, the directors of the E., J. & E. were also employees of the E., J. & E., and I think our present directors are all officials or employees of the E., J. & E. Railway (Tr. 226–229).

As to whether or not the E., J. & E. purchased any land without having previously made a request upon the Steel Corporation for an appropriation and taking the matter up with the Steel Corporation: I do not recollect of ever purchasing any land without taking it up with the Steel Corporation, and I don't remember any purchase for the E., J. & E. Railway; we sold some.
66 I did not take that up. I made a contract for sale and notified them that I had done it. As to these contracts, shown and listed in Defendant's Exhibit 1, the E., J. & E made a report to the Steel Corporation of those contracts regardless of the amount involved, if it was for capital expenditure. I don't know that any of these contracts were sent down to the United States Steel Corporation after being executed. If those were brought up in the annual stockholder's meeting or the director's meeting, I think copies of those reports were sent down to the Corporation for its information, it being the stockholder and the only holder that has it (Tr. 229–231).

I stated yesterday that such contact as the Steel Corporation officials had with the E. J. & E. was had with me as its president, or our traffic manager or superintendent. I now mean to state that the Steel Corporation officials did confer with the Traffic Manager at times—the same as any other shipper on the road— our superintendent and perhaps the whole line of officials, certainly the same as any shipper on the road would ask for cars, or ask to have the railroad perform its service for them, that they perform for the general public. The vice president would go down to New York, probably attend the presidents' meetings on invitation, and of course he would see them and talk with them. That is, ordinary business affairs, they would want to know what the situation was out here; the Corporation gets its information from its different companies all over the United States and Europe (Tr. 231–232).

Some reference has been made in the testimony to the Chicago Lake Shore & Eastern paying a rental to the Illinois Steel Company of something like $500,000 before the lease from the C. L. S. & E. to the E. J. & E. That was discontinued at the time the lease of the C. L. S. & E. was made to the E. J. & E. (Tr. 232).

67 WILLIAM J. FILBERT, called as a witness on behalf of plaintiff, having been first duly sworn, testified as follows:

Direct examination by Mr. SMELKER

I am at present Chairman of the Finance Committee of the United States Steel Corporation. I have been with the Steel Corporation since its organization in 1901. I was made Assistant Comptroller at the initial organization of the Corporation. I became Comptroller of the Corporation in June 1902. I became Vice Chairman of the Finance Committee in January 1932. I became Chairman of the Finance Committee in January of this year; January 1st. As Comptroller of the Steel Corporation, I was in general charge of the accounts and general statistics and various fiduciary matters of the corporation, under the direction, of course, of the Finance Committee and the Chairman of the Board (Tr. 98–99).

As Comptroller the duties I had to perform in connection with the subsidiary companies were in the discussion and contact with them in connection with general accounting matters and in respect of certain fiduciary matters (Tr. 99).

I attended presidents' meetings while I was Comptroller of the Corporation. As to the purpose of those meetings: They were convened generally with the idea of securing from the presidents of the various subsidiary companies an opinion of general business conditions in the respective localities where those companies were located,

68 and with respect to the general trend of business of those subsidiary companies. I believe those meetings were called at the instance of the president of the United States Steel Corporation. As Comptroller, I was interested in the lease and agreements entered into by subsidiary companies, especially the Chicago

Division subsidiaries. With respect only to a comparatively—in fact very limited, number of those agreements and then only in an advisory capacity. As to whether I was interested as Comptroller of the Steel Corporation in the lease that was executed between the E., J. & E. and the Chicago, Lake Shore & Eastern Railway: I was familiar more or less with the negotiations leading up to that lease and did at the instance of Judge Gary, who was Chairman of the Corporation, submit some views (Tr. 99–100). I knew that Mr. Banks did make certain tentative suggestions with respect to the terms of that lease. I could not now say that I remember the particulars of them. As to whether those proposals were changed to any extent before the lease went into effect: Yes sir, the final terms were changed materially from the initial suggestions. Those changes took place by negotiation between the parties interested and concerned. The parties were the Elgin, Joliet & Eastern Railway Company, the Illinois Steel Company, or the Chicago, Lake Shore & Eastern Railway Company, through the Illinois Steel Company, which was the owner of its stock, and the United States Steel Corporation. Well, I couldn't say that the United States Steel Corporation was interested in having the lease put through; it acquiesced, I think, but the initiation of the idea emanated from Mr. Banks (Tr. 101). As to whether the earnings of the Illinois Steel Company were lessened or enlarged by the lease: I would be guessing at that for the reason that I answered before. My opinion is that initially with the incidence of the lease they were
69 lessened. As to why the matter of the lease was taken up with Judge Gary and with the Steel Corporation: I think Mr. Banks could answer that question; he brought the proposition to the Steel Corporation. The practice of the subsidiary companies in general was to take up with the Steel Corporation only those transactions which involved major features of consequence to the stockholder. When the lease became effective, President Banks of the E. J. & E. took up with me the subject of having it modified, but not on the basis particularly of its being burdensome, but it was not as liberal as he thought it should be. I presume I took the matter of the modification of the lease up with Judge Gary, but I don't remember that distinctly. As to whether the lease was finally modified in some of the terms I suggested to Judge Gary, I couldn't answer that without looking up the record; it was modified, I know that (Tr. 102–103).

As to the purpose of the Resolution of the Finance Committee of the Steel Corporation, dated May 1, 1903, which is page 2 of Exhibit D, and which refers to the matter of expenditures in capital account: I think the resolution speaks for itself, in order that the corporation might be advised as to the extent to which the subsidiary companies would engage in the making of capital expenditures which called for the provision of funds for that purpose, and as to the general character of contracts which they might make, enter

into for the purchase of equipment and the performance of the work. That circular was sent to all subsidiaries of the Steel Corporation, including the E. J. & E. of course, and the Chicago Division subsidiaries especially. As to what reports were submitted by the subsidiaries in response to this circular: Whenever a
70 subsidiary desired to undertake a piece of work which involved a capital expenditure it submitted to the Corporation a form which was termed an appropriation request. That form was a communication addressed by the local officer or officers of the respective subsidiary, any individual subsidiary company, to the president of that company, indicating the probable amount of money that was desired to expend and the general purpose for which it would be expended. That form, if it met with the approval of the subsidiary's president, was so endorsed by him and submitted to the Steel Corporation (Tr. 103–105).

As to what happened to the appropriation request after it arrived in the office of the Steel Corporation: It was reviewed, looked over and presented to the Finance Committee of the Corporation. If the Finance Committee was agreeable to the making of that improvement it was endorsed with the recommendation of the Finance Committee. After the Finance Committee was through with it, it was sent back to the president of the subsidiary company. Then on the basis of receiving that advice the president proceeded with the work, making the expenditures approved (Tr. 105–106).

Referring to a document that was marked yesterday Government Exhibit K, the front page reading "United States Steel Corporation, a letter of advice to subsidiary companies, concerning appropriation for construction, improvements, and so forth", dated December 1907: That is a letter of advice which was issued by the Corporation and sent to all subsidiary companies solely for the purpose of providing a uniform and orderly manner in which these so termed "appropriations" which I have referred to a moment ago might be compiled and submitted to the Corporation, to facilitate and obtain a standardized and uniform method as to the size of forms and the
71 general scope of information to be supplied. The sheets added in the back of the exhibit are: There is one here dated November 22, 1909, which interprets and in a measure amplifies some of the advices contained in the primary circular letter. There is another one dated August 22, 1910, which has the same end in view. The other forms, the other blanks are on the same order. Here is one dated in 1925 which modifies the amount of an appropriation which need be submitted to the Corporation from $5,000—The original letter of advice indicated that any capital expenditure involving the outlay of less than $5,000 need not be submitted to the United States Steel Corporation in the manner I have indicated. In 1920 that was changed to $10,000. Then there was one on July 6, 1920, which indicated that the provision of the preceding circular changing the amount to $10,000 did not apply to the purchase of land but only to improvements and betterments. Here is one in 1925

which indicates the basis upon which calculations should be made in respect of overruns on appropriations. Any appropriation for overruns of the original appropriation which do not exceed $10,000 need not be presented to the Corporation. That was a provision in the original circular, that if the overrun on an appropriation as originally requested exceeded—I am not sure whether it was $5,000 then subsequently changed to $10,000—I think it was $5,000 and subsequently changed to $10,000, that if the overruns do not exceed $10,000 no report of those overruns need be made. Here are two circulars dated in 1932, which are purely, no, the first one changes back to limit of $10,000 to $5,000 in respect of appropriations which need be submitted. The second circular is purely an accounting circular; the two following circulars are purely details of accounting. The last pamphlet in that exhibit is a form to be used, that last form is the form of the appropriation request which was
72 outlined in this initial circular letter and was for the purpose of securing a return on a standardized blank. That is the request made by a subsidiary, and the form is filed by the subsidiary and then transmitted to the United States Steel Corporation. It comes first to the president of the company. Then down at the end of he second page is the indication of what the Steel Corporation recommends. The form number of that is—up in the corner it says 120, 120-A. The blank spaces in the right hand corner under the word "Numbers" is merely for recording purposes. Provision is made for noting two numbers, one is the subsidiary company's number of the appropriation, the other is the United States Steel Corporation number, merely for registering purposes, filing purposes. I think that form was originated in the Comptroller's office in conjunction and conference with one of the vice presidents of the Steel Corporation. I mean the Comptroller's office of the Steel Corporation (Government Exhibit K was then received in evidence, subject to objection as to relevancy) (Tr. 106–110). That system that I have been talking about extended over the period from 1908 down to the time of the beginning of this suit. And it included among others the subsidiaries who are mentioned in this suit. The practice continues today (Tr. 111).

As to whether those appropriation requests were laid before the President of the United States Steel: They finally came to him, they weren't necessarily transmitted direct to him, they may have been transmitted to a vice president but ultimately they came to the president of the United States Steel Corporation and by him were submitted to the Finance Committee. Of course, they wouldn't be endorsed and recommended until they came to the Finance Committee, except it might have been the endorsement as of president of the company. Anyhow, the appropriation request came
73 in some way either to the president or vice president and in some way to the Finance Committee, that is right, and the Finance Committee would take some action upon the request. As to whether that action might be either disapproving the request

or approving it with amendments and suggestions: I think it was either recommended or not recommended. If it were not recommended it would be returned and it might later come back in some amended form. The Finance Committee didn't undertake to make these appropriations. It would either endorse it or it didn't endorse it. If the appropriation was not recommended through the proper channel the determination of the Committee was transmitted to the proper officers of the subsidiary corporation (Tr. 111–113).

As to whether the subsidiary corporation in any instance that I recall particularly, any of these subsidiaries mentioned in this suit, ever acted in defiance of the orders of the United States Steel Company, that is to say, if they did not recommend it did they go ahead and make the appropriation anyhow: I have no recollection of the subsidiaries covered in this suit having taken any such action; but I do know that some subsidiary companies did on quite a number of, a large number of occasions, go ahead and make capital expenditures without reporting them to the Corporation initially, in accordance with this plan which we have discussed. That was true with reference to the E., J. & E. Railway. I couple the E., J. & E. and C. L. S.—yes, I will answer yes to the E., J. & E. A particular expenditure I have reference to in regard to the E., J. & E. made without submitting the appropriation was very substantial and large expenditures in connection with building of the terminals at Gary, Indiana. That was in 1909 and 1910, 1908, those I remember
74 distinctly. As to whether the authority to build that terminal was originally given or the approval of building that terminal was originally given by the Steel Corporation: Endorsement was given by the Corporation to proceed with terminals, then the construction of them on the basis of certain appropriation requests which were rendered in the manner I have indicated. I do not exactly mean that the appropriations that had been approved were exceeded. Not exactly that. The railroad proceeded with the construction of parts of terminals that were not originally indicated in the appropriations which were submitted. I am not referring to an excess expenditure for any particular work that was recommended but to new work undertaken (Tr. 113–115).

As to how long it has been since any subsidiary, including the Elgin, Joliet & Eastern Railway has made such expenditures without the approval of the Finance Committee: I couldn't answer expressly with reference to the E. J. & E., but it is going on all the while with some one or other of the subsidiaries. I recall some within the past five years. I recall no specific instance where the E. J. & E. has made expenditures without approval. I wouldn't want to answer specifically as to whether any of the Chicago Division subsidiaries made expenditures without approval (Tr. 115).

Reports are made to the Corporation by all of its subsidiaries of expenditures for capital purposes irrespective of whether those expenditures are made on appropriations first recommended by the Corporation. But where the expenditure is less than $5,000, when

that maximum is in force, which it is at the present time, it is not necessary for the subsidiary to obtain approval before the expenditure is made. But they do report such expenditures to the Steel Corporation. There is one exception to that proposition, that
75 authority was not necessary where the amount was less than $5,000: That is in respect to land; I overlooked that. Those land purchases were all first submitted to the Corporation, no matter what amount was involved. And that is true in regard to the Chicago Division subsidiaries as well as the Elgin, Joliet & Eastern Railway (Tr. 116–117).

The quarterly forecast of unexpended balance of appropriations is the report submitted by the subsidiary companies to the Corporation, including the estimated amounts which they will expend during the succeeding five or six months for capital expenditure purposes, already approved. The form upon which those reports are made were formulated by the United States Steel Corporation in the Comptroller's Office (Tr. 117).

As to what is meant by "budget estimates": Budget estimate is a rather flighty thing, but some years ago, in order to get a perspective of what amount of money might be needed for capital purposes on behalf of all of the subsidiary companies of the Corporation, the various subsidiary companies were asked by the Steel Corporation to consider what prospective betterments and improvements they had in mind to be made during the period of three or four or five years hence. I believe these budget estimates were furnished by all the subsidiaries; that did not come under my jurisdiction or charge, but I believe they were. They have been abandoned for about three years. The amount of figures that the subsidiary companies felt they might need or would desire in the next five years run up to five or six hundred millions of dollars, and the depression came on and the thing almost died aborning (Tr. 117–118).

Referring to Government Exhibit E, page 1, 2, and 3 of it being
76 a circular in regard to the setting up of the clearance account: I am familiar with this. The so-called clearance account is merely a bookkeeping account in which is recorded the results of a plan or method of settling accounts due between the various subsidiary companies of the Steel Corporation. It is a plan which was discussed by the Auditors of all of the subsidiary companies of the Corporation at the time and was unanimously agreed upon by them as being a desirable and practical thing to accomplish greater efficiency, greater economy, and greater expedition in the actual settling of these accounts. The clearance method was nothing more or less as applied to the subsidiary companies of the Steel Corporation than is the Clearing House in Chicago through which checks on different banks are cleared and settled on balance. It delayed no company in receiving payments for the money due it, but it did result in greater expedition, much less

circumlocution and expense in settling those accounts. I would say that in the case of the Railway subsidiary companies it did not extend to and include the settlement for transportation charges, freight, or passenger. But it included all other purchases made between subsidiaries, settlement of all purchases made between subsidiaries. This circular was issued by the Comptroller of the Steel Corporation, Mr. Shearson at the time. The account was handled in the Steel Corporation office under the direction of the Comptroller of the Steel Corporation. (Tr. 118–120).

As to who decides the rate of interest to be charged or credited on debit or credit balances due in the clearance account: that is decided very largely by the treasurer of the Steel Corporation, but on some occasions through consultation with the Comptroller of the Steel Corporation (Tr. 120–121).

77 The Advance Account is a bookkeeping name attached to the account between the Corporation and any subsidiary companies in which is carried as to any one company the balance due to or from the Corporation arising from any transaction between those companies other than arising from any transaction between the Corporation and the subsidiary company other than to the extent of this clearance balance, which, after all, is liquidated once a month. The account represents very largely and almost exclusively on the one hand loans by the United States Steel Corporation to its subsidiary companies who are in need of funds, or contra, the placement to the credit on those subsidiary companies with the Corporation of excess funds which they have in hand and do not require in their business. As to what rate of interest the Steel Corporation pays the E., J. & E., for instance, on a balance in its favor in its advance account: I can't answer what that interest rate is at the present or has been in the past. It may have varied, probably did, from time to time, under different conditions, but always without exception the E., J. & E. did receive a credit for interest on that account. I have here Exhibit E and refer to pages 56 and 57 thereof, 56 being a copy of a telegram to me dated Chicago, Illinois, June 7, 1909, and signed by E. W. Sutton, who was then auditor of the Elgin, Joliet and Eastern Railway Company. The telegram reads:

"Will you kindly advise annual rate of interest you will allow E., J. & E. on $1,187,083.39 you have on deposit in advance account?"

And on page 57 is my reply thereto, which reads:

"Worcester, June 7, 1909. F. W. Sutton. Your wire the an-
78 nual rate of interest on the amount referred to will be two and one-half per cent."

As to the specific rate of interest being paid by the Steel Corporation: I know interest has been allowed, but exactly what rate or for what period of time I cannot say; I could not say without looking up the record (Tr. 121–123).

As to what supervision the Steel Corporation exercises over the depositaries of the various subsidiaries: Only in advising when re-

quested by the subsidiaries as to the Corporation's judgment as to the soundness of the respective banks under consideration. As to whether the subsidiaries, including the E., J. & E., in the Chicago Division follow the advice of the Steel Corporation in that respect: I couldn't answer that definitely. They propose, whenever they wish to open a new account at any bank, the name of that bank and ask the advice of the Corporation based on what presumably is the Steel Corporation's broader perspective of the general banking situation that they may have, as to whether the Corporation feels that that is a safe depository. I do not know of any instance where any subsidiary, including the E., J. & E., and the Chicago Division subsidiaries did not follow the advice of the Steel Corporation (Tr. 123–124). As to what supervision the Steel Corporation exercises over the balances maintained in these banks by the subsidiaries: None, to my knowledge. The Steel Corporation kept advised as to the balance maintained in the subsidiary banks, by reports rendered, I think, daily: but I may be wrong, it may be weekly (Tr. 124–125).

Q. How are the dividends paid by subsidiaries?

A. How are they paid?

Mr. KNAPP. If the Court please, I was in hopes that this would come to an end, but it seems to me very improper to carry
79 on this long discussion about the subsidiaries generally. There is only one defendant in this case, and we are interested, it seems to me, only in what is done and the relation between the United States Steel Corporation and the E., J. & E. Railway Company, and I, therefore, objection to the question.

Mr. COLLINS. If the Court please, the petition contains allegations covering all of the other manufacturing subsidiaries, they are mentioned in the bill, the relationships that are complained of are those of the manufacturing, producing subsidiaries mentioned in the bill and the Steel Corporation and this defendant which is the transporting company so it seems to me that all this evidence is perfectly proper and perfectly relevant and essential evidence certainly (Tr. 125).

The COURT. What has been exercising my mind during this hearing has been how am I going to deal with this situation in view of the evidence without the subsidiaries being before the Court.

Mr. COLLINS. That there will be no order to be entered against the manufacturing subsidiaries?

The COURT. It will affect them very materially, any order adverse to the E., J. & E.

Mr. COLLINS. Beg pardon?

The COURT. It might affect them very materially, any order that might be entered adverse to the E., J. & E. Railway.

Mr. COLLINS. If the Court please, I think that is the result that the statute intended if, indeed, there is an adverse result, that is to say if the relationship——

The COURT. Here your bill charges, you are trying to bring yourself within this Reading case. In the Reading case, as
80 I understand it, all these companies were before the Court. How are you going to deal with this whole situation, it is somewhat analogous to a conspiracy. You claim these are departments and agencies of the United States Steel Corporation and that the E., J. & E. is nothing but the United States Steel Company road, how are you going to deal with this whole situation without all these subsidiaries before the Court? I am just telling you what is troubling my mind. I am going to overrule the objection. I am going to let the evidence in, subject to the objection and we will take it up in the argument, but you are covering pretty broad ground. I think you ought to confine it to the particular subsidiary mentioned in the bill.

Mr. COLLINS. I agree that the question should be directed to these particular subsidiaries mentioned in the bill.

The COURT. And more particularly to the E., J. & E.

Mr. COLLINS. In that connection, of course, I think we have to show the relationship between the three sets, rather the three corporations, the Steel Corporation, the E., J. & E., the manufacturing subsidiaries whose commodities the E., J. & E. hauls. We will try to direct our questions to them.

The COURT. I will admit the evidence subject to the objection, then we may take it up in the argument (Tr. 126–127).

The WITNESS. As to the method of declaring dividends on the E., J. & E. and what, if anything, the Steel Corporation has to do with it: The President of the E., J. & E. Railway Company on almost every occasion when he happened to be in New York has spoken in the past, or when he was alive, to Judge Gary, respecting the matter of the declaration of dividends by that Railway
81 Company; and since Judge Gary's demise, I think, he has invariably spoken to me about it, as stating orally what the results of the operations were and what his idea as to a declaration of a dividend should be. Judge Gary and latterly myself, have indicated that so far as we saw, there would be no objection, they would be quite in order and no objection to the declaration of the dividend the president had proposed, although I do know in one case I happened to disagree with Mr. Banks; he thought he ought to declare a larger dividend than I thought was advisable under all the circumstances, at that time; but he went ahead and declared it just the same, and it was paid. As to the fact concerning extra dividends declared by the E., J. & E.: The same rule, the incident that I mentioned here was an extra dividend on the part of the road, compared with the usual rate that it had been paying during all the preceding 25 years I would say (Tr. 128–129).

The United States Steel Carnegie Pension Fund is a plan and a fund which was created jointly by the United States Steel Corporation and the trustees of the Andrew Carnegie Pension Fund, under

which there was provided a joint aggregate trust fund with a principal of $12,000,000; the income from which was to be used, and is used, in the payment of pensions to employees of the United States Steel Corporation and any or all of its subsidiary companies upon their qualifying under the term of the pension plan, for a pension. That trust fund is held by the United States Steel and Carnegie Pension Fund. That is a separate corporation. It is a corporation of the State of Pennsylvania. The fund is administered by that corporation (Tr. 129–130). As to what happens when the in-

82 come from the fund is not sufficient to meet the pension: Under an agreement with the United States Steel Corporation and that Pennsylvania corporation, if the income is not sufficient, the United States Steel Corporation advances on behalf of its subsidiary companies the deficit for the additional amount required for the fund. Then, semi-annually the United States Steel Corporation renders a charge account against each of the subsidiary companies for its proportion of that deficit but which proportion in any case is less than the amount of the actual payment of pensions made to the retired employees of the particular subsidiary company. (Tr. 130–131). As to who determines how the moneys thus spent by the subsidiaries shall be taken into account in the books of the E., J. & E. and the subsidiaries named in the petition: Why the auditors of the respective companies, although the comptroller of the United States Steel Corporation did, for the purpose of securing a uniform accounting treatment of all those amounts in the accounts of the subsidiary companies, he did outline and indicate a general plan for entering the amounts up in the account. My recollection is, however, that that plan recommended by the Corporation was not applicable to Railway Companies subsidiaries because they were controlled by or how they should account for those payments in their accounts by the Interstate Commerce Commission regulations. The E., J. & E. keeps its accounts with respect to the fund that they expend on pensions in a manner different than the subsidiaries named, the other subsidiaries named in the petition. But the charge is still made by the Steel Corporation (Tr. 131–132).

I have here circulars dated February 2, 1924, February 3,

83 1925, February 9, 1926, February 8, 1927, February 14, 1928, February 9, 1929, February 4, 1930, February 3, 1931 (marked for identification as "Government Exhibit L"): They are all circular letters addressed in the respective years to the officers and employees of the United States Steel Corporation and subsidiary companies, signed for the years prior to 1928 by the United States Steel Corporation, George K. Leet, Secretary; for 1929 and subsequent years by the Profit Sharing Committee of the United States Steel Corporation, indicating the particulars of the awards made by the Profit Sharing Committee under the Profit Sharing Plan of the United States Steel Corporation, to such officers and employees of the companies named, who were allotted participation

in that fund. That was addressed to the officers and employees of the E., J. & E., who were allotted a participation in this profit sharing fund, and who were granted such participation. I believe, however—I know that these circulars, with the evidence of participation in the form of checks were transmitted through the President of the E., J. & E. Railway Company for distribution and in turn by him to the particular employee concerned. (Government Exhibit L was received in evidence subject to objection as to relevancy) (Tr. 132–134). The Committee of Stockholders having control of the profit sharing fund, at the present time is composed of Mr. J. P. Morgan, Governor Nathan L. Miller, and Mr. Percival Roberts, Jr. The working of the Profit Sharing Plan is: Stockholders of the United States Steel Corporation, in 1921, I think, adopted a profit sharing plan under which it was provided that when the net profits of the Corporation equalled $100,000,000 or more, a certain percentage of
those profits should be set aside as a profit sharing fund, for
84 distribution to the officers and employees of the corporation, and subsidiary companies, who had performed meritorious, representative and unusual service, and I have forgotten precisely the adjectives, but it was "unusual and meritorious" service. The allotment of that fund was to be made to the participants which I have designated as a class, by the profit sharing committee which was elected by the stockholders of the United States Steel Corporation. The money appropriated by each of the subsidiaries to this fund goes to the profit sharing committee. Practically it goes to the profit sharing committee, but technically it goes to the profit sharing committee, but in order to expedite the matter instead of delaying the mobilization of the money, naturally all of the subsidiaries cannot remit, and it has been the practice as I recall, of the United States Steel Corporation to pay the entire amount of the fund to the profit sharing committee; then to ask the subsidiary companies to remit to the corporation the proportion which is allotted to it for its employees. Technically they pay it to the profit sharing committee, but it travels the route that I have indicated merely to expedite the entire transaction or the confirmation of it. (Government Exhibit M, a printed page of which reads, "United States Steel Corporation, By-Laws, December 18, 1933", was received in evidence, subject to objection as to relevancy) (Tr. 135–137).

CROSS EXAMINATION BY MR. MILLER

As First Assistant Comptroller and then Comptroller, then Vice Chairman, and now Chairman of the Finance Committee, I have been in close and intimate contact with the business affairs of the
United States Steel Corporation during the period of time
85 since its organization. There is no one in the Steel Corporation now, no officer of the Steel Corporation now, who has intimate knowledge, as intimate knowledge for that period of time,

as I have, since the retirement of Judge Gary and Mr. Farrell (Tr. 138).

With respect to this Pension Fund, $4,000,000 was contributed by Mr. Carnegie and $8,000,000 was contributed by the United States Steel Corporation. Nothing was contributed to it by the E., J. & E. Railway. This fund was transferred to a Pennsylvania Corporation entirely distinct from the United States Steel Corporation. That is, that corporation is not a subsidiary of the United States Steel Corporation. This pension fund is paid to those employees who are retired after having reached a certain age. The President of the E., J. & E. Railway Company determines what employees of that road are to be retired on pension. No officer of the United States Steel Corporation has anything to say about it. The President of the Elgin, Joliet & Eastern Railway Company determines what employees of the E., J. & E. Railway shall receive participation in that fund and the proportion of their participation. He also participates at times, but his proportion and amount is designated by the profit sharing committee. He does not fix his own participation. The president is not permitted to fix his own participation. With respect to all other employees, the ones who are to share and the respective proportion for each, that each is to have, is determined exclusively by the President of the E., J. & E. Railway (Tr. 139–140).

Attention has been called to Exhibit E, this circular letter having to do with the settlement of accounts which first was prepared
86 by Mr. Shearson when he was comptroller. I call attention to a statement on the first page of it:

"All other traffic charges and claim accounts due between any of the railroads and other companies named, will, however, be excluded."

By traffic charges is meant freight charges for transportation of freight. By claim accounts is meant claims that are made by shippers against railroads, shortage, loss and damage, and overcharges, and claims by other subsidiary companies who ship over the road. Both the accounting and the settlement of such items—traffic charges and claim accounts—are made under Interstate Commerce Commission rules with respect to the payment of freight. All such matters with respect to the transportation and freight charges, claims, and so forth, are settled in accordance with the rules of the Interstate Commerce Commission, wholly independently of this Clearance Account (Tr. 140–141).

Q. Now in relation to the property and the affairs of the E., J. & E. Railway and the United States Steel Corporation has there been to your knowledge during this entire history the slightest commingling in any respect of the property and affairs of those two companies to your knowledge?

Mr. COLLINS. If the Court please, I object to that question; it is so general and so vague that the witness cannot possibly give a yes or no answer to it; you would have to take up each item and go through and have the witness state whether it constitutes a com-

mingling, and it is objectionable on the ground just stated, and also it calls for an opinion.

The COURT. I will sustain the objection.

Mr. MILLER. Exception.

87 (And thereupon the Defendant, by its counsel, then and there duly excepted) (Tr. 141–142).

Q. In order to put it in the record in just a little different form, during that interval have the properties and the affairs of the Corporation and the Railway been kept distinct?

Mr. COLLINS. If the Court please, the same objection; it is a general question, and calls for an opinion by the witness.

The COURT. Sustain the objection.

Mr. MILLER. Exception.

(And thereupon the Defendant, by its counsel, then and there duly excepted.)

Now as to the so-called Advance Account, I stated I did not recall the interest paid by the Steel Corporation on credit in that account to the railroad. I could not testify to what rate or rates may have been paid for certain periods; that is something that has escaped my recollection. I testified I knew that interest had been paid, and that I know. From time to time money is deposited by the E., J. & E. Railway with the United States Steel Corporation, on which it pays interest. In that respect it acts as a depository. It becomes a debtor of the railroad to the amount of the deposit. That money goes in the Steel Corporation's own bank account. It maintains bank accounts, many and numerous bank accounts throughout the country. And, of course, its deposits in those banks are always greatly in excess of any deposits made by the E., J. & E. Railway (Tr. 142–144). To the best of my recollection, the interest received by the United States Steel Corporation on its bank deposit accounts is less than the rate of interest which it allows to the E., J. & E. on its deposit account. When I said I did not remember about the interest, I meant I did not now have any recollection, did not have

88 in mind specific interest at any specific time. I always know what the bank interest is. I always know at the time what interest is being paid to the E., J. & E. I know as a fact, whether or not the interest paid the railroad is equal to or in excess of that received by the Corporation from the bank with which it deposits money. An account is kept by the Steel Corporation, a separate and distinct account of its business transactions with the E., J. & E. Railroad. It is always possible to determine at any date how the state of that account stands, as between the Corporation and the Railroad, and the record is very clear. I have mentioned certain matters with respect to which I said that Judge Gary's or my advice was taken. I mentioned this with reference to the C., L. S. & E. Now, with reference to this lease, the lease was a bargain between the Chicago, Lake Shore & Eastern Railway and the Elgin, Joliet & Eastern Railway Company. Mr. Banks was

president of both of those companies (Tr. 145–146). Mr. Banks being president of both railroads, Mr. Buffington, President of the Illinois Steel Company, was there to represent or speak for the C., L. S. & E. Railroad. The Illinois Steel Company was the stockholder of the C., L. S. & E. The actual bargain made as to this lease was made between Mr. Banks representing the Elgin, Joliet & Eastern Railway Company and Mr. Buffington, representing through the ownership of stock the Chicago, Lake Shore and Eastern Railway Company. Judge Gary and I did not have anything whatever to do with it except in an advisory capacity. The contracts were drawn in Chicago. I do not know where they were executed. I did not have anything to do with it. I was, in the manner I have stated, brought into the discussion preliminary to the actual lease being made. I am referring to the rental, and another consideration which was there: The issuance and deposit of $4,000,000 of E., J. & E.
89 stock, delivered as a guaranty for the lease (Tr. 147–148). As to what interest the Steel Corporation had in the matter: It had this interest, prior to the entering into that lease, the Chicago, Lake Shore & Eastern Railway Company was heavily indebted to the United States Steel Corporation for moneys loaned to it, and used largely for the development of its large terminal at Gary and *the purchase of additional equipment and motive power.* This amount ran into a great many millions of dollars, my recollection now being it was somewhere around $15,000,000, and the Steel Corporation was interested in securing the repayment to it of those moneys loaned or the greater part of them, or in fact, all of them. The question of how the Chicago, Lake Shore and Eastern Railroad Company could repay these moneys had been discussed off and on between Mr. Banks and Mr. Buffington and Judge Gary and myself on various occasions during 1908, and it was concluded that the only way in which a substantial amount of that money could be raised by the Chicago, Lake Shore & Eastern Railway Company was through the issue by it of a bond issue; and it was also recognized that any such bond issue would not be readily marketable at a satisfactory interest rate, except and unless that bond issue was guaranteed by the United States Steel Corporation. Now, when the question came to a focus of leasing the Chicago, Lake Shore & Eastern Railway to the Elgin, Joliet & Eastern Railway, and having in mind and before us this prospective issue of bonds by the Chicago, Lake Shore & Eastern Railway Company, naturally the United States Steel Corporation was interested in what the terms of that lease would be, in view of the fact that it was looking forward to and did guarantee the principal and interest of the Chicago, Lake Shore & Eastern Railway Company bonds. So that then it did have that definite interest in the lessor company. But with respect
90 to what the company received particular earnings, whether it should be the Elgin, Joliet & Eastern, or the Chicago, Lake

Shore & Eastern, it did not make any substantial difference to the Corporation. The Corporation, through Judge Gary and I, took pains in the advice we gave with reference to the subject as to whether it was a fair transaction between the companies themselves. That is, we considered the terms of the lease, the equities of the respective parties as we saw them, the probable ability of the Elgin, Joliet & Eastern Railway Company to meet the conditions and terms of the lease. In other words, it was our purpose to give advice on the question as to what was fair to each company relatively as between themselves. Now, I will state, without going further into detail on these matters on which our advice was sought, by Mr. Banks or by his successor, that the policy where there were dealings between subsidiary companies was maintained of each dealing with the other on a fair basis. It was the conscious and intentional policy so far as I was in contact with it, of treating the E., J. & E. Railway as a separate and distinct corporate entity (Tr. 148–151).

I have spoken of this one important contract in which Judge Gary and I took part, and I have described it; as to how it was with respect to contracts generally made by the E., J. & E. Railroad, and whether I was consulted about them: I have no knowledge of any other contracts of any kind made by the Elgin, Joliet & Eastern Railway Company, I was not consulted about them. I cannot answer definitely as to whether Judge Gary was consulted, but I am quite sure he was not, with barely possible one exception. He and I were pretty close together. We occupied adjoining offices.

He talked with me about everything that was going
91 on. I never knew of his even being consulted about any other contract made by the E., J. & E. Railway in advance of its making, with this possible one exception: That was the question of the renewal or modification—I am not sure which, of a traffic agreement between the Chicago, Lake Shore & Eastern Railway Company and the Chicago & Eastern Illinois Railway Company. That matter has already been referred to in this trial. As to whether, with those two exceptions, I ever knew of a single instance in which Judge Gary was even so much as consulted, or whether there ever was a single instance other than those in which I was consulted, with respect to the making of contracts by the E., J. & E. Railway in advance of their making: I never was conferred with on any contract that the E., J. & E. entered into except this particular one of the lease of the C., L. S. & E. Neither I nor anybody else in the United States Steel Corporation had anything whatever to do with the operation of the railroad of the E., J. & E. I had nothing to do with making rates. I was never consulted about making rates. I assume the officials of the E., J. & E. determined what rates should be put in, subject to the Interstate Commerce Commission (Tr. 152–154). On the subject of the maintenance of the railroad and its equipment: No one in the United States Steel Corporation had anything to say about that, to my knowledge. I had never been con-

sulted about it. As to the subject of the service to be rendered by the railroad to shippers: I never heard of it, it never came up before the Corporation in any way. Nothing was ever suggested at any time, and there was no talk about the subject of division of rates on other railroads. I understand that the division of through rates are matters of agreement between the railroads. I never was
92 consulted or talked to about divisions and allowances; and I have no knowledge nor did I ever hear of any other official of the Steel Corporation having been talked to on that subject. There was no business transaction of any kind or character between the United States Steel Corporation and the E., J. & E. Railroad during this period, any specific showing in the account made at the time, in which the interest, whatever it was, of the railroad on the one hand, and the corporation on the other, that was not correctly and accurately shown. Mr. Shearson's name has been mentioned here; he was the Comptroller whom I succeeded. There has also been some exhibits and some correspondence between Mr. Banks and Mr. Shearson. Mr. Shearson was succeeded by me as Comptroller, June 1, 1902, so that any conversation or correspondence between Mr. Banks and him at a later period would not have been at all with him as an official of the Steel Corporation. In other words, Mr. Shearson on his retirement as Comptroller had no other connection or relation of any kind with the Steel Corporation (Tr. 155–157). I had nothing to do with the reports that were made by the railroad company to the Interstate Commerce Commission. I know that as a matter of fact such reports are required; and I am familiar with the character of those reports. They require among other things their property account, for money, their investment accounts, and the particulars of their property account and for many years, if I may be permitted to say, before I became connected with the Steel industry, I was connected with a railroad, and in my capacity that I then occupied it was my duty to actually make and compile reports to the Interstate Commerce Commission. There was a material difference in what the officials of the United States Steel Corporation did with relation to the E., J. & E. Railroad and its manufacturing subsidiaries: In the case of the manufac-
93 turing and raw material subsidiary companies, the Corporation exercised a much wider supervision and interest in the affairs or conduct of the affairs of those companies than it does in the case of railways. The reason for this is that, in the first place, the manufacturing and raw material companies of the corporation constitute the backbone, in consequence of the interest of the Steel Corporation, and secondly, because in order to satisfactorily and economically operate it is desirable that there be a coordination of operating efforts between these raw material companies in the supplying of raw materials constantly and regularly for the mills, and the operation of the mills. The fact that the railroad is a common carrier, and therefore a public servant, had something to

do with it. That was recognized from the earliest days of the corporation, that the railway companies and certain other public service companies whose stock the corporation owns were in a class by themselves so far as concerns the corporation exercising a supervisory interest in the conduct of the affairs of those companies, and that was brought out fairly clearly in the circular that was issued by the Corporation shortly after its formation. I refer to the circular, which I believe, as I recall was yesterday referred to issued under the direction of the Finance Committee of the Board of Directors of the Corporation (Tr. 157–160). With reference to the matter that we were discussing, I read a letter from Mr. Farrell to Mr. Banks under date of November 4, 1912, addressed to Mr. Banks, President of the Elgin, Joliet & Eastern Railway Company. This is Exhibit 6, page 6 of Exhibit D:

"Replying to yours of the 1st instant regarding a circular letter to all presidents dated October 30th:

"In sending out general letters, we appreciate that some are
94 not always directly applicable to some companies, but, in order that all of our officials may be in an intelligent position respecting matters of policy, and our wishes and ideas on many subjects which may not have been taken up with each president individually, it is our custom to send these circular letters to all, without exception, and in doing so, it is of course not expected that officials not expressly interested will feel that such letters are especially intended for them."

"(Signed) FARRELL, *President.*"

That is not the letter I had reference to (Tr. 162–163). The United States Steel Corporation does not own any property used by the E., J. & E. Railroad in the performance of its service as a common carrier. The United States Steel Corporation does not have in its possession or control any property belonging to the E., J. & E. Railway. It has had and probably it has today for a liability—I am talking about property, not accounts. There is an account, or are accounts in regard to money transactions between the E., J., & E. Railroad and the United States Steel Corporation. Reference has been made here to the so-called Advance Account in which is entered money deposited from time to time by the railroad. Those moneys are subject to call by the railroad. With respect to those the relation of debtor and creditor exists between the two. The railroad has occasion to use money so deposited, and if it has occasion to use the money so deposited, it withdraws it from time to time. Officials of the railway company decide when it will withdraw money so deposited. The officials of the United States Steel Corporation have
95 nothing whatsoever to say about it. They do not attempt to exercise any control over that matter. The railroad usually signifies the desire or intention to withdraw money deposited by issuing a draft and depositing it for collection through its bank account, or sometimes it requests it as depositors do with banks, and

so the transfer of the money is on telegraphic advice, supplemented usually by a draft to cover it (Tr. 164–165).

REDIRECT EXAMINATION BY MR. SMELKER

Although, as I stated on cross examination, the E., J. & E. did not contribute to the original pension fund, as to whether it is or is not true that it is called upon to make up its share of a deficit whenever the income from the Pension Fund is not sufficient: It does make up a proportionate amount of the sums paid to its employees, but not all of them. As to who makes the demand: It is billed against them by the United States Steel Corporation. As to whether or not the Treasurer of the Steel Corporation calls upon the E., J. & E. to make deposits in the Advance Account: I understand that at times he has requested or suggested that such deposits be made, but more frequently the action is taken on the initiative of the Railway Company officials. As to who originates the idea in the first place: I should say it depended upon whether the treasurer of the United States Steel Corporation made the suggestion or request, or whether the treasurer or other official of the Railway Company, believing it had a surplus in funds, elected to transfer them to another deposit account, namely with the United States Steel Corporation. I can't answer as to who originated the proposal of the advance account itself. I stated that depositing funds
96 in this advance account was the same as depositing in ordinary banks. That is correct, so far as the availability of those funds on demand of the Railway are concerned. They are subject to draft, which is about the same as a check. In order to have cash, you do not have to get the approval of the Steel Corporation (Tr. 166–167).

As to whether at all times the interest rate on deposits in the Advance Account was always higher than that paid on bank deposits on the Steel Corporation: My recollection is that the interest rate paid by the Steel Corporation on deposits with it by the E., J. & E. was always equal to or higher than the interest rate received by the United States Steel Corporation on the deposit of its fund in the banks; and I can state my basis for that if you desire. I determine that to be a fact because I know that the highest rate received by the United States Steel Corporation on any of its deposit accounts, at any time, demand deposit accounts, was 2.6 per cent and that was on only a single account, and a relatively small account. Then on the bulk of its deposit accounts the rate has varied from 2.5 to 2, 1½, 1¾, 1¼, and 1 per cent, and now for a considerable number of months it has been nothing; and on that basis I say that the return, the average return of interest received by the United States Steel Corporation has been less than the interest rate paid to the E., J. & E. because that rate, while I do not remember it exactly, I know it was 2 per cent or above 2 per cent. I could not say whether

it was ever any higher than 2½ per cent (Tr. 167–168). As to the reason for depositing these funds in this advance account in the Steel Corporation by the E., J. & E.: I think it was influenced by the fact that they would get probably a larger interest return than
97 if they permitted them to remain in their other deposit account. As to what use the Steel Corporation makes of these funds: Funds received are deposited in its bank accounts, they are used for its general purposes, the identity of the deposit is, of course, lost the minute it is deposited and you cannot trace the identity of the precise money you receive from any one source. As to whether the money is taken from the depositories and loaned in other places: It is moneys that are used in the general conduct of the affairs of the United States Steel Corporation. We never loan money on call (Tr. 169–170).

The question of the division of through rates being earned by the C., L. S. & E. was not brought into our discussions concerning the proposed lease. On shipments consigned to the Illinois Steel Company, for instance—they were not to my knowledge, I never had any discussion of those points. The Steel Corporation had the same interest in the lease as did the Illinois Steel Company, that is, for instance, the Illinois Steel Company was a stockholder of the C., L. S. & E. and the United States Steel Corporation was a stockholder of the E., J. & E., and of the Illinois Steel Company. But the interest was comparatively the same, a stockholder's interest in other words. Ultimately the stockholder beneficiary was the same (Tr. 170–171).

98 GORDON L. EDWARDS, called as a witness on behalf of plaintiff, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. SMELKER

I am Treasurer of the United States Steel Corporation and have been since June 1st, 1927. I have been connected with the Steel Corporation since May 1901. My general duties as treasurer are financial. I have the custody of bank accounts and securities. As to whether I have any supervision over the accounts kept by subsidiaries through reports made by them to the Steel Corporation: We receive reports, yes (Tr. 233–234).

As to the purpose of the advance account maintained between the Steel Corporation and the subsidiaries: The advance account is nothing more than a deposit account. It is an account in which the E., J. & E., as an illustration, deposits any cash that they might have in excess of their requirements, as working capital. Referring to Government Exhibit E, pages 28, 29, 30, 31, and 32: I didn't write all of those letters. They were written from my office. I did not sign all of the letters; there is one of them signed by the assistant. They were written and mailed from my office, however (Tr. 234).

Page 28, of Government Exhibit E is a letter, headed "United States Steel Corporation, 71 Broadway, New York", dated December 18, 1928, from "Office of the Treasurer", addressed to "Mr. F. L. Koontz, Treasurer, Elgin, Joliet & Eastern Railway Company, 208 South La Salle Street, Chicago, Illinois."

"Financial Matters

99 "DEAR SIR: Please deposit to the credit United States Steel Corporation in Continental National Bank and Trust Company two million dollars on or before December 24th. The amount will be credited to you in Advance Account.

"Yours truly,

"(Signed) G. L. EDWARDS,
"*Treasurer*" (Tr. 235).

On page 29, is a letter headed in the same manner, and dated June 29, 1929, addressed to "Mr. F. L. Koontz, Treasurer, Elgin, Joliet & Eastern Railway Company, 208 South La Salle Street, Chicago, Illinois:

"Financial Matters

"DEAR SIR: Please deposit to credit United States Steel Corporation in Continental Illinois Bank and Trust Company five hundred thousand dollars on or before July 6th. The amount will be credited to you in Advance Account.

"Yours truly,

"J. M. GEWECKE,
"*Assistant Treasurer.*"

On page 30, is a letter headed in the same manner, and dated August 24, 1929, addressed: "Mr. F. L. Koontz, Treasurer, Elgin, Joliet & Eastern Railway Company, 208 South La Lalle Street, Chicago, Illinois.

"Financial Matters

"DEAR SIR: Please deposit to credit United States Steel Corporation in Continental Illinois Bank and Trust Company one
100 million dollars on or before August 27th. The amount will be credited to you in Advance Account.

"Yours truly,

"G. L. EDWARDS,
"*Treasurer*" (Tr. 235–236).

And on page 31, is a letter headed in the same manner, dated September 16, 1929:

"Mr. F. L. Koontz, Treasurer, Elgin, Joliet & Eastern Railway Company, 208 South La Salle Street, Chicago, Illinois.

"FINANCIAL MATTERS

"DEAR SIR: Please deposit to credit United States Steel Corporation in Continental Illinois Bank and Trust Company one million dollars on or before September 23rd. The amount will be credited to you in Advance Account.

"Yours truly,

"J. H. GEWECKE,
"*Assistant Treasurer.*"

And on page 32, a letter headed in the same manner, dated October 14, 1929:

"Mr. F. L. Koontz, Treasurer, Elgin, Joliet & Eastern Railway Company, 208 South La Salle Street, Chicago, Illinois.

"FINANCIAL MATTERS

"DEAR SIR: Please deposit to credit United States Steel Corporation in Continental Illinois Bank and Trust Company one
101 million dollars on or before October 21st. The amount will be credited to you in Advance Account.

"Your truly,

"G. L. EDWARDS,
"*Treasurer*" (Tr. 236–238.)

In all probability those requests were complied with, I can't say from memory. I recall one request, I can't give the date. a similar letter was written or communication sent the E., J. & E. in which they advised that they didn't have any excess cash and would not send it (Tr. 238).

The Steel Corporation pays to the E., J. & E. on funds deposited in this account two and a half per cent interest. That rate was fixed many years prior to my taking office, and it has remained the same, and always years ago was better than E., J. & E. has received on similar demand deposits with no exception. As to whether I am kept advised as to the interest received by the E., J. & E. on funds deposited in banks: Possibly from time to time, there is no regular advice on that; I may make an inquiry and it might develop. If I do make an inquiry I find out the facts, of course, simply to inquire what the rate of interest is: I might, too, say here that the rates of interest on the E., J. & E. accounts were fixed long before I took office, I mean with reference to the bank accounts. As to what use the Steel Corporation makes of the funds deposited in the Advance Account: Those funds are deposited along with other funds of the Steel Corporation and used in connection with the current requirements of the Steel Corporation or its subsidiaries. These funds are available for use in any manner by the Steel Corporation, the same as any bank would make use of funds deposited with it (Tr. 238–240).

102 As to what is the procedure when the E., J. & E desires to withdraw funds from this Advance Account: The E., J.

& E. makes a draft upon the United States Steel Corporation, deposits it in its bank for collection and it is presented at the office of the United States Steel Corporation and paid promptly. They do that without any advice, it is a demand account. The draft mentions the Advance Account, only to show that the Advance Account will be debited in the E., J. & E. account when the draft is paid (Tr. 240–241).

Referring to Government Exhibit E, I recall writing that letter. The purpose of that letter was only statistical. As to what were the results that I expected to get from sending that letter: Not any more than to have a complete record of the various banks in which subsidiaries had their deposit accounts, and the interest that they carried. The letter is a request upon subsidiary companies to submit a report to the Steel Corporation as to their banks (Tr. 241–242). As to whether or not I have given advice to the E., J. & E. in respect to its depositories: I can't answer that offhand, but I wouldn't be surprised if we had. If you mean by that, if we have designated a bank with which they should do business or depository in which they should deposit their funds, we never have. As to whether we ever give an advice to the E., J. & E. as to any individual depository: I can't answer that offhand (Tr. 243).

Referring to Government Exhibit E, page 43: That is addressed to me as Treasurer of the U. S. Steel Corporation. The letter is from the Treasurer of the E., J. & E. The date is March 10th, 1932. As to what was the usual practice referred to in that letter: Why it is not at all unusual for the E., J. & E. to transfer money
103 to the credit of the U. S. Steel Corporation in the Continental Bank, as stated there. I don't recall what the usual practice was during the month of March. Referring to page 44 of Government Exhibit E: That is my letter, apparently, I don't recall it (Tr. 243–244). As to whether it was or whether it is now the practice of the E., J. & E. to transfer funds to the Advance Account during the month of March of each year: I don't recall that. That is the E., J. & E. letter saying it is their practice. As to whether it was the practice of the Steel Corporation to receive money credited to the Advance Account of the E., J. & E. during the month of March of each year: It probably was. That letter would indicate that, but I don't recall it (Tr. 245).

CROSS EXAMINATION BY MR. KNAPP

Mention has been made of requests made by me upon the treasurer of the E. J. & E. to transfer funds to this Advance Account. There was nothing compelling about such requests. Very frequently the treasurer of the E. J. & E. wrote me that he wanted to make a deposit of funds. As to the number of requests made by me and comparing them with the number of requests made by the treasurer of the E. J. & E.: There have been requests made for more money, requests made for more deposits by the E. J. & E. than requests for

us to remit. There were more requests made by the E. J. & E. for permission to deposit to the credit of the Steel Corporation. That is true as to the number of requests and amount of money. As to what period my answer covers: I don't know the dates, it goes back for a long period. I referred to at least one occasion when I made a request for money and the E. J. & E. did not comply. I don't
104 recall the correspondence, that there was any correspondence. It seems to me on the occasion of my seeing the treasurer of that company something was said relative to remitting money to the Steel Corporation and later, on telephone advice from him, he stated that he could not do it. He explained he needed money for other purposes and he would not make any further deposit at that time in the Advance Account (Tr. 246–248).

105 JOHN B. CARSE, called as a witness on behalf of plaintiff, and being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. SMELKER

I am Chairman of the Purchasing Agents' Committee of the United States Steel Corporation. I have been connected with the Steel Corporation about 31 years. Before becoming Chairman of the Purchasing Agents' Committee I was a member of the Advisory Committee of the United States Steel Corporation. My office is at 71 Broadway, New York. The Purchasing Agents' Committee of the Steel Corporation consists of the members of the manufacturing companies and their mining companies. No officials of the E. J. & E. are on that committee, not at the present time. They have attended in the past. The function of that committee is to secure information on purchases made from all subsidiaries of the United States Steel Corporation. It is my duty, as Chairman of the Purchasing Agents' Committee, to supervise the purchases of the manufacturing companies and the mines of all subsidiary companies except their railroads. I have no supervision over the railroads (Tr. 249–251). If the Illinois Steel Company makes a purchase from the American Bridge Company. I am not familiar with that. Reports are not rendered to me as to those purchases. If the Illinois Steel Company makes purchases I am not advised, from the subsidiary company, I understand you to mean. From anybody, yes, except when you come to the subsidiaries, I do not know that. If the E. J. & E. makes a purchase from the Illinois Steel Company, I do not know that (Tr. 252).

106 CROSS EXAMINATION BY MR. MILLER

There are letters in evidence here indicating that the E., J. & E. Railway, the appropriate official, does make certain reports to me of purchases, after the purchases are consummated. Those reports are made to me as information, for statistical purposes, and for

those purposes only. I do not exercise any direction or supervision over those purchasing accounts whatever. And they are not reported to me until after they have been made and sometimes several months after they are made (Tr. 253).

107 EDWARD BEECROFT, called as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. SMELKER

I am Secretary and Treasurer of the Elgin, Joliet & Eastern Railway. I have been so employed since May 1st, 1931. Prior to that time I was Assistant Secretary and Assistant Treasurer. My office is located at 208 South La Salle Street (Tr. 254).

The amount credited to the E., J. & E. by the Steel Corporation in the Advance Account on January 1, 1929, was approximately $12,700,000; on January 1st, 1930, approximately $12,200,000; on January 1st, 1934, approximately $965,000 (Tr. 254).

As to whether at any time I took up with Mr. Edwards the proposition of withdrawals from this Advance Account: Yes we advised Mr. Edwards that we would draw on a certain day for a certain purpose. As to whether we have ever withdrawn funds from this account without advising him of that fact: No we usually give him notice that we are going to draw on the account for a specific purpose. Those withdrawals are made by draft upon the Steel Corporation. The draft states that it is charged against the E., J. & E. Advance Account. But it has no reference to any deposit which might have been made prior to that time (Tr. 255).

CROSS EXAMINATION BY MR. KNAPP

I said that on January 1st, 1930 I think it was, there was over $12,000,000 deposited in this Advance Account, and in 1934 it had dropped down to $965,000. As to what had become of all of that money in the meantime: Well in the intervening years the
108 railroad business was depressed and we had to draw down on our Advance Account, transfer funds from that account to our general account here in Chicago, to be used for running expenses of the road. For payment of dividends and interest we would draw by draft on our Advance Account in New York. There have been no dividends on the E., J. & E. for two years back. I have gone over the records in my office for that period of years for the purpose of determining how many times we asked leave to make a deposit in the Advance Account and how many times the treasurer of the United States Steel asked us to make deposits to the Advance Account. Requests from the treasurer of the E., J. & E. were the greater in number. Requests from the treasurer of the E., J. & E. were the greater in amount. Over this period of years from 1920 to September 1933, the total amount of money that we

deposited at our request was about $47,000,000. The amount that the United States Steel Treasurer requested us to deposit in that account was thirty-two million. We asked permission to make a deposit ninety-nine times. They asked us to make a deposit thirty-four times (Tr. 256–258).

I mentioned the fact that when we were going to make a draft upon the Advance Account down there we wrote letters to Mr. Edwards advising him of the fact. There was not any necessity of doing that in order to get our money. It was a mere matter of courtesy and the draft followed immediately afterward (Tr. 258).

REDIRECT EXAMINATION BY MR. SMELKER

There was never a debit balance against the E., J. & E. in the Advance Account, not that I can recollect (Tr. 259).

109 RECROSS EXAMINATION BY MR. KNAPP

As to whether it was the custom of our office in its relation to banks, if we were going to draw a large amount from our deposit in a bank here, for us to give them notice before we presented our check or draft: I have had no experience of that kind (Tr. 259).

Counsel for the Government then offered in evidence a document described as "the Inter-Company Price List", which was received in evidence as Government Exhibit N, subject to objection by defendant's counsel as to relevancy (Tr. 261).

110 CHARLES H. KENZEL, called as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. SMELKER

I am purchasing agent of the Elgin, Joliet & Eastern Railway Company. I have been so employed about 20 years. Prior to that time I worked in the Purchasing Department of the E., J. & E. for a few years, and, prior to that, in another department of the E., J. & E. My office is at 208 South La Salle Street. My duties as Purchasing Agent are for the purchase of all materials required (Tr. 262).

As to what report of purchases we submit to the United States Steel Corporation: We have a weekly report that is prepared after miscellaneous purchases are made from outside companies. It does not include subsidiaries. That is the only report that is prepared by my department. But there is a report prepared by the Accounting Department which we submit from our office, known as the Quarterly Report. That covers the aggregate of purchases from outside companies for the period, including purchases by the E., J. & E. Those reports are addressed to Mr. J. B. Carse, Chairman of the Advisory Committee of the Steel Corporation. I receive no

instructions from Mr. Carse concerning the purchases from outside concerns or from the subsidiaries (Tr. 263–264).

As to the policy of the E., J. & E. in respect to buying materials and supplies from subsidiaries of the Steel Corporation in cases where those supplies are available from that source: We pur-
111 chase them from them. We purchase from subsidiary companies for the reason that most of those materials are standard priced materials. As to what extent we confine our purchases of those materials to subsidiary companies: I would say they are pretty much confined, about 100 percent, yes, sir. That practice has been in existence as long as I have been Purchasing Agent, and it was in vogue when I became Purchasing Agent, so far as I know (Tr. 264–265).

We obtain our coal from United States Fuel Company. That is a subsidiary of the Steel Corporation. As to how the price we pay for the coal is determined: The invoice price is the published price shown in the Quarterly report. Government Exhibit N is recognized as the Quarterly Price Report inter-company prices. I have that at my disposal at all times. It is issued quarterly, each quarter. In a general sense it is published by the United States Steel Corporation (Tr. 265–266).

CROSS EXAMINATION BY MR. KNAPP

The mines of the United States Fuel Company are located at Westville, Illinois, on the line of road of the Chicago & Eastern Illinois Railway Company The E., J. & E. has trackage rights down to those mines. Coal is the principal commodity hauled by the E., J. & E. over this line of the C. & E. I. under the trackage rights at the present time. It is hauled in solid train loads (Tr. 266). As to what are the principal reasons or advantage to the E., J. & E., if any, of receiving coal from the United States Fuel Company: As a matter of practice, our coal is combined with other coal coming up from that region in solid train loads. Side opening, self cleaning steel cars are used for hauling coal. The coal comes up in these
112 trains to our line and then switches over right down to the consumption point. The consumption points have dumping coaling stations, automatic stations. As to whether there is any advantage to the E., J. & E. in the use of these side dumping cars: The hoppers and coaling stations are constructed to accept that unloading method. The side dumping cars are not the usual and common type of coal car. If we ordered coal from miscellaneous mines we would get mostly center dump cars. There might be different kinds of cars in the same train load. That would be a disadvantage. In my experience the coal we get from the United States Fuel Company has always given us satisfactory performance. There is an advantage to E., J. & E. Railroad Company in having coal of one type continuously instead of alternating with different types of coal. Uniformity is a decided advantage. The mine price which we have to pay for our

coal would probably be comparable with other prices. We have in recent years purchased coal on bids. That was during the strike of two years ago; also during government control in 1919, at the direction of the Regional Purchasing Committee in Chicago. L. S. Carroll was at the head of that Regional Purchasing Committee. He was in no way connected with the E., J. & E. Railway. He was purchasing agent, Chicago & Northwestern Railway Company. We took bids at that time, from probably twenty bidders on coal. The prices quoted by the bidders were all F. O. B. mine. In order to find out the actual cost of coal to the railway company, we added the haulage charge of 5 mills per ton per mile to the F. O. B. mine cost. If it came over different lines of railroad, all of the railroads being under government control at that time, the expense would have been no different to the government. Under government control it was customary in computing the cost of coal to add a certain rate as
113 the estimated cost of haulage (Tr. 267–270). After computing the cost from the mine to the line of the E., J. & E. road, the bid submitted by the United States Fuel Company was the cheapest. This is the memorandum or schedule I made of bids at that time. (Marked "Defendant's Exhibit 3" for identification). It shows that, after adding the cost at the [illegible] as the transportation charge at cost as I have explained, that the price per ton, the cost to the E., J. & E. of the coal furnished by the United States Fuel Company was $2.634. I have on this sheet a schedule of those bids with the cost to the E., J. & E. delivered on the line of the E., J. & E. There was a contract entered into at that time for coal from the United States Fuel Company. It is this document you hand me (Marked "Defendant's Exhibit 4", for identification). This is executed by the United States Fuel Company, by C. S. Wardley, and executed by the E., J. & E. Railway Company by C. H. Kenzel. It bears the approval of the Regional Purchasing Committee, the Northwestern Region, under the signature of L. S. Carroll. This price list I spoke of, the Quarterly Price List, contains just one article purchased by the Railway Company—coal (Tr. 271-272). The price list consists principally of raw materials used by the different subsidiary or manufacturing companies. I said that generally the articles which were produced by subsidiaries, which the E., J. & E. needed, we did buy from the subsidiaries. There was never an order or direction to me to do that. There are reasons why we did it—we thought it might be of advantage to the railroad company with mills being on our line; the question of deliveries were factors, and things of that kind. We did buy all of the stuff that we needed from subsidiaries when
they were produced by the subsidiaries, but there have been
114 exceptions. I don't recall of any importance. There has been quite a considerable portion of frogs and switches purchased from outside companies. The frogs and switches in this region were bought from Pettibone, Mulliken & Company, located in Chicago. They had no connection with or interest in the United

States Steel Corporation or any of its subsidiaries, that I know of. When the frogs and switches were bought from a subsidiary company it was the Lorain Steel Company located at Johnstown, Pennsylvania (Tr. 273–274).

115 FRANK G. CAMPBELL, called as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. SMELKER

I am Special Engineer, Elgin, Joliet & Eastern Railway Company. I have charge of valuation work and other special duties (Government Exhibit O was marked for identification) (Tr. 275–276). Government Exhibit O is information furnished to the Interstate Commerce Commission in a reply to questionnaires sent out in connection with Ex Parte 104 proceedings, which was a general inquiry as to the ownership and use of industrial tracks. It was a proceeding before the Interstate Commerce Commission. The document shows the name of the industry, the number of miles of industrial track serving the industry, the original cost of those tracks, and the average annual maintenance cost. Industrial tracks are tracks exclusively used for the service of an industry. Generally speaking there are a very great many companies shown on the list—They are industries located along the tracks of the E., J. & E. (Government Exhibit O was admitted in evidence) (Tr. 276–277).

CROSS EXAMINATION BY MR. KNAPP

Mr. KNAPP. I think it is proper for me to just mention that in the complaint one of the grounds of complaint is that the E., J. & E. furnishes a large amount of track on the plants of the Steel Corporation to serve those plants, and it does not do that for other industries along its line; and this has particular application to that charge (Tr. 278).

116 Mr. COLLINS. Excuse me; I find that we are in error, to the extent that we allege that the E., J. & E. does not maintain tracks for other shippers on its line, and I am perfectly willing to withdraw that allegation, or to admit the error of it, and that will save you time, if you prefer that.

Mr. KNAPP. I would rather go ahead; I don't want to take any unnecessary time, but I prefer to go ahead and make a rather full explanation because I do that to show that on the plant of the Illinois Steel Company at Gary, there is more than 100 miles of these private tracks, and I think that that needs some explanation. That is, if it is not explained, it might be wrongfully construed, and therefore I think I would like to put in this by way of explanation.

The COURT. Go ahead.

Mr. KNAPP. At the head of what is known as Column 4 appear the words, "miles of track owned and/or maintained by respondent." That would be the E., J. & E. and located on property of respondent.

In the next column, 5, "miles of track owned and/or maintained by respondent and located off the property of respondent"

The WITNESS. That is the wording of the form that was furnished to us and not our own choice of words. It was on the form sent out by the Interstate Commerce Commission. In Column 3, under the words "Name of Industry", is the name of the industry for which the E., J. & E. has built a track on their private property or on their own grounds. When the railroad company builds tracks for an industry upon the ground of the industry, it also maintains those tracks. When it does that of course it has the complete and exclusive control and operation of those tracks. I do not happen to know just now how many of the industries we furnish with tracks in this way are on this exhibit (Tr. 278–280).

117 THOMAS E. BOND, called as a witness on behalf of plaintiff, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. SMELKER

I am vice president of the Elgin, Joliet & Eastern Railway Company. Prior to that time I was traffic manager of the Elgin, Joliet & Eastern Railway Company, from 1923 to 1932. Prior to that time, I was Assistant Traffic Manager and Chief of the Tariff Bureau, and also clerk in the Tariff Department of the Elgin, Joliet & Eastern Railway Company (Government Exhibit P was marked for identification). Referring to Government Exhibit P: The first document, consisting of six pages, is a memorandum report of the internal switching at the plants served by the Elgin, Joliet & Eastern Railway, made at the request of Mr. Marsh, or one of his assistants, on March 3, 1927. Mr. Marsh is connected with the Interstate Commerce Commission and had to do with the investigation of this case. The memorandum was made by me. The last sheet on the exhibit is the tariff, Elgin, Joliet & Eastern Railway Company's local freight tariff No. 22–I, naming the charges assessed for internal switching at plants served by the Elgin, Joliet & Eastern (Government Exhibit P was received in evidence subject to objection as to materiality) (Tr. 282–284). On the date of the memorandum, 25 locomotives of the Elgin, Joliet & Eastern Railway Company were in service at the plant of the Illinois Steel Company at the Gary plant, according to this memorandum. At the time the memorandum was written the interplant switching rate of the E., J. & E. was $5.00 a car for standard railroad cars, and a dollar and a half for the ladle,

118 for the ladling of hot metal and hot slag, which were handled in ladles. The interplant switching rate of other terminal roads at that time was generally $3.15 a car. The present interplant switching rate on the Elgin, Joliet & Eastern Company—the present general rate is $5.00 a car, the same at it was at the time this was made, and the rate of the other terminal lines is substantially the same as it was, $3.15 (Tr. 285).

119 SCOTT M. ROGERS, called as a witness on behalf of plaintiff, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. SMELKER

I am President of the Elgin, Joliet & Eastern Railway. Prior to becoming president I was vice president of the Elgin, Joliet & Eastern Railway. I held that position from 1909 until May 1st, 1931, with the exception of a period when I was General Manager under the United States Railroad Administration. I became connected with the E., J. & E. in 1901 as Chief Clerk to the president (Tr. 286–287).

I brought with me in accordance with a subpoena copies of the United States Steel Carnegie Pension Fund rules (Marked for identification as Government Exhibit Q). Government Exhibit Q is the pension rules of the United States Steel and Carnegie Pension Fund. It outlines the rules of the United States Steel and Carnegie Pension Fund. The date of it is May 1st, 1931. (Government Exhibit Q was received in evidence, subject to objection as to relevancy) (Tr. 287–288). I also brought with me a memorandum prepared at the Government's request concerning the directors of the E., J. & E. (Marked as Government Exhibit R, for identification). Referring to Government Exhibit R: I was requested to bring with me a memorandum, showing the names of directors of the Elgin, Joliet & Eastern Railway from 1901 to 1920, who were connected either as an officer or a director with the United States Steel Corporation. The list that I have here is correct to the best of my knowledge and I haven't been able to check it with the records of the Steel Corporation, but as far as I know it is a correct statement (Government Exhibit R was admitted in evidence, subject to the objection as to relevancy) (Tr. 289–290). Referring to Gov-

120 ernment Exhibit P, on page 6 of which there is mentioned the fact that on the date of the memorandum a certain number of locomotives were in service at the plant of the Illinois Steel Company at Gary. As to whether the locomotives there mentioned were put into the plant of the Illinois Steel Company for the exclusive use of the Illinois Steel Company: I presume that this statement is correct. I didn't prepare it; but we have locomotives operating in the plants of the Illinois Steel Company. As to whether they do work exclusively for the Illinois Steel Company: I don't know what you mean exactly by exclusively for the Illinois Steel Company. We have locomotives operating in the plants which are completing the service which we perform in road service. In other words, we bring a shipment to our yards there and locomotives are necessary to complete that delivery. These locomotives are used in intra-mill work and in making deliveries, setting cars to the plant to which they are consigned; setting cars to the different points in the mill where they are shipped to, where they are billed to. Those

particular engines would not be doing work for other industries, no. I brought with me in accordance with the subpoena, a copy of the weekly force report (Marked Government Exhibit S, for identification) (Tr. 291–293). Government Exhibit S is a weekly report which is prepared by our division superintendents, a copy of which is sent to our general superintendent and one copy to my office, which shows each week the number of locomotives operating in our different yards, and the number of clerks employed in our agents' offices, and yard clerks. Each report covers two weeks, this is of date December 25, and December 18, 1926 (Government Exhibit S was admitted in evidence, subject to objection as to relevancy)
121 (Tr. 293–294). As to whether we receive similar reports in connection with the mill operation of independent steel manufacturers on the line of the E., J. & E.: I don't know that we have any other plants where we have locomotives assigned. This report covers all the yards where we have switch locomotives working. The general auditor of the E., J. & E. is Mr. P. L. Fisher. His office is in Chicago. He is also in New York. His office in New York is located at 71 Broadway. That is the office of the Steel Corporation. As to why the general auditor of the E., J. & E. has an office in New York: It is my understanding that some few years ago Mr. Fisher, who was then general auditor of the E., J. & E., was borrowed from the E., J. & E. to do some special work down there. As to what the special work consisted of, I do not know of my own information. I understand that it was in connection with a settlement with the Government during Federal operations; possibly some other items. I think that was at the time when I was with the United States Railroad Administration. Settlement with the Government in the operation of the Elgin, Joliet & Eastern (Tr. 295–296).

CROSS-EXAMINATION BY MR. KNAPP

I referred to a document that reported the number of locomotives engaged in the plant of the Steel Corporation at a certain time. That varies from time to time. To answer a little more in detail concerning the operation of those locomotives in the plant and what kind of service they perform: The locomotives in the plant perform what is called an intra-mill service handling cars from one
122 location in a plant to the other. They also complete the road service, in other words, by setting at the unloading point the cars which are loaded, which we bring in in our road trains. Suppose a train comes into Gary with material in it for delivery to the Illinois Steel Company's plant at Gary: The train would come into what we call the Kirk yard. That is outside the plant; it would be handled usually with what we call a transfer engine which would move that train into the plant of the Illinois Steel Company and the cars would then be taken by the locomotives in the plant and set

at the point of unloading. Different types of locomotives are used for those different services. The locomotive that would bring the train from outside of Gary into the city of Gary is called a road engine, and when the train is broken up to be delivered piecemeal, car by car, a switch engine is used. The expression was used here in asking me whether we assigned or gave to the Illinois Steel Company for their exclusive use any of these engines. We do not turn over any of these engines to the Illinois Steel Company. We continue to operate all of the engines ourselves (Tr. 297–298). In other words, this service of setting cars at the point destined is part of the transportation service. Supposing that the material is destined from the plant to any consignee anywhere, the process would be: Cars would be picked up at the plants at which they are loaded by our switch engines, placed in the yard where they would be weighed, and from there handled by a transfer engine out to our Kirk yard where the road engines would be coupled on and the train would be hauled with one of our road engines. In other words, that service is part of the through transportation service which we perform under railroad tariffs. As to whether there is a railroad tariff for every one of those types of services: There is a tariff
123 for the road haul and there is a tariff for our intra-mill work.

The intra-mill work is the switching or movement of cars from one plant or from one mill rather to another mill inside the plant which is covered by an intra-mill switching tariff. That tariff is filed with the Indiana or Illinois Commission; I don't know whether those are filed with the Interstate Commerce Commission or not. With reference to Gary, it must be filed also with the Indiana Commission. The switching of the cars from a point in the plant when it is destined out on the road and it is transferred from a point in the plant out to the yard does not take a special charge of itself. That is covered by the through charge for the entire service from the point of loading to the point of destination (Tr. 299–300). As to how many engines we have employed in the different plants of the Illinois Steel Company: It varies entirely according to the business. The purpose of putting the engines in there is to perform the necessary work. We keep our engines down to as low a limit as possible and at the same time properly serve the industry. We furnish the same kind of service to any other industry located on the line of our road. I mentioned the fact, I think, that I didn't recall any other industry except the industries of subsidiaries where we keep engines constantly in the plant. That is because in some of the plants the industries perform their own switching; in others we are only occasionally called upon to perform the switching. There isn't business enough to warrant keeping an engine there at all times. But we aim to give satisfactory service to every industry on the line of our road. I was asked whether, when an engine was moved into the plant of the Illinois Steel Company to perform this service, whether

it did work for any one else. The engine is employed all the
124 time it is in there (Tr. 301–302). As to whether that particular engine may be delegated to any other yard or any other industry at any one time: I wouldn't say as to that because under the agreement we have with our engineers the engines are assigned to them in certain yards, assigned to the locomotive engineers. The weekly force report shows the number of locomotives operating in our different yards as compared with the previous week. It is sent to our general superintendent and myself for the purpose of enabling us to keep a check on whether or not our superintendents or other supervising officers may be operating more engines in the different yards than we think is necessary. It is a matter of general information to me in supervision of the work being done. It has no other purpose than that. Mr. Fisher was mentioned. He first became general auditor of the E., J. & E., I believe, somewhere along in 1917. He continued as general auditor for some time. As to how he happened to go to New York: As I say I believe it was an arrangement made whereby they borrowed Mr. Fisher to do some special work they wanted. I had nothing to do with that; I think at the time Mr. Fisher went to New York, as I remember, I was still with the United States Railroad Administration. And having borrowed him they never sent him back. As to the nature of the duties which he performs for the E., J. & E. now: More in an advisory capacity. Mr. Fisher is occasionally out here, I suppose not over three or four times a year at the outside. And the auditing department of the road are free to consult him on all problems that they have. The railroad company does not pay Mr. Fisher for the services that he performs for the Steel Corporation in New York. His salary which is paid
125 him by the E., J. & E. is a very nominal and small salary (Tr. 302–304).

REDIRECT EXAMINATION BY MR. SMELKER

In referring to the locomotives in service at the Illinois Steel plant at Gary, you may have referred to the switching as interplant switching; ordinarily that service or that work is called intra-plant switching. As to whether or not those locomotives referred to in Government Exhibit P, on page 6 thereof, were engaged in intra-plant switching: As I say I didn't prepare that statement but I take it from the way it reads that those locomotives not only performed intra-plant switching but also completed the road service (Tr. 305).

As to the rate on intra-plant switching back in March 1927, the date of Government Exhibit P, I don't think it has been changed since 1927; if it hasn't it is $5.00 a car (Tr. 306).

(Government Exhibit T, consisting of several sheets illustrating the two types of appropriation requests, was received in evidence, subject to objection as to relevancy (Tr. 308).

Thereupon the plaintiff rested its case in chief (Tr. 312).

126 *Offers in evidence*

Whereupon the defendant, in order to maintain the issues on its part, introduced the following evidence, to wit:

(Defendant's Exhibit 1, being a list of contracts certified by the Secretary, was admitted in evidence, subject to objection as to relevancy.) (Tr. 312.)

(Defendant's Exhibit 2, being a special resolution referring to one contract alone, was admitted in evidence.) (Tr. 313.)

(Defendant's Exhibit 3, being a tabulation of the bids for coal that was made during war control, was admitted in evidence.) (Tr. 314.)

(Defendant's Exhibit 4, being a contract entered into for coal under the bids which were scheduled during the railroad administration, was admitted in evidence.) (Tr. 315.)

127 EUGENE J. BUFFINGTON, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. KNAPP

I retired from active business July 1, 1932. Prior to that time I was President, Illinois Steel Company, from 1899 until my retirement. As president of the Illinois Steel Company, I had general supervision of the business of the company. I was its chief executive officer. I was familiar with all departments of the business of the Illinois Steel Company (Tr. 316). During the existence of the Gary plant, while I was president of the Illinois Steel Company, that Company held a lease on the Gary plant. It operated the plant. Twelve blast furnaces were located at the Gary plant. They are located in one line along a slip which is an inlet built from Lake Michigan into the property. The raw materials used in the making of steel are principally ore, coal, limestone, and quite a variety of other lesser important materials. The ore that was used in the Gary plant was received on the docks at the Gary plant and it was shipped from the ore mines of the ore Company, that is a subsidiary company of the United States Steel Corporation, located principally in Minnesota. The limestone was received from a quarry located in the state of Michigan, on the lake. At one time the limestone was received from a quarry in Illinois or Indiana. The reason for the change was that the quarry in Illinois was about exhausted of its limestone and then the quality of the limestone found in Michigan was superior in some respects to the limestone contained in the quarry in Illinois. The ore was brought to Gary by ore boats

128 on Lake Michigan. Those ore boats were specially constructed for that purpose (Tr. 317–318). The limestone was transported by rail to Gary from the Illinois quarry, while the supply of limestone was there obtained; from the quarry in Michigan the limestone was transported to the Gary works by boat. Those boats are specially constructed for limestone and are self unloading. The

coal used in the plant was obtained principally from mines owned and operated by subsidiary companies in the United States Steel Corporation and partially from so-called independent mining companies. It is necessary to have a special kind of coal for the making of coke. The coal used in making coke was obtained partially from mines owned and operated by a subsidiary company of the United States Steel Corporation located in Kentucky and from other mines located in West Virginia; and then some of the coking coal was obtained at times from outside companies or independent companies, so-called. The Gary works also used coal that was not coking coal. That was obtained partially from mines in Illinois owned and operated by a subsidiary company of the United States Steel Corporation and partially from Kentucky; and some from West Virginia (Tr. 319–320). Speaking of the coal that was obtained in Illinois, those mines were located in what is known as the Danville, Illinois, District, from a point, I believe, named Westville, Illinois. That coal reached our plant by railroad, the Elgin, Joliet & Eastern Railway, operating over tracks of the Chicago & Eastern Illinois. Coking coal obtained from Kentucky and West Virginia reached our plant over the Elgin, Joliet & Eastern Railway. From West Virginia, it was a total haulage of about 600 miles. From West Virginia it originated principally on the Norfolk & Western Railroad, which connected up with the New York Central Lines or
129 Pennsylvania lines. Then it reached a junction with the E., J. & E.; yes, and from there was delivered to the Gary works (Tr. 320–322). As to other raw materials used in the process of smelting ore: Some scrap is used at times in blast furnaces in making pig iron, but that is comparatively little. After the ore has been smelted in the blast furnace it moves in the form of molten metal to the steel making department. As to the number of different kinds of departments there are: At the Gary works there are four stationary open hearth departments, three of the type called tilting furnaces (Tr. 322). As to the amount of the tonnage of incoming material to Gary in times of normal full operation: I carry in mind more definitely the steel producing capacity and the pig iron producing capacity of the Gary plant. The Gary plant has a capacity for producing about 5,000,000 tons of steel annually (Tr. 324). The Illinois Steel Company during my administration of its affairs had a plant at South Chicago. That plant was of the same general type and character as the Gary plant. The South Chicago plant was slightly smaller than the Gary plant. It had eleven blast furnaces. During my administration of the Illinois Steel Company it also owned a steel plant at Joliet. That was very much smaller than either the South Chicago or Gary works. The South Chicago works and the Joliet works of the Illinois Steel Company obtained their raw material from substantially the same sources that the Gary plant did (Tr. 325). The ore and limestone for Joliet came by lake and would be unloaded either at Gary or

the South works and transported by the E., J. & E. railway to the Joliet works. The capacity or output of the South Chicago works was about four and three quarter million tons of ingots annually.

The capacity of the Joliet works was about 500,000, five or six
130 hundred thousand tons of ingots annually (Tr. 326). As to the character of the products of these different steel works: At the Gary works rails, plates, structural material, merchant bars, steel wheels for railroad cars, and axles for railroad cars; and at the South works all of those products excepting steel wheels and axles. Transporting of the products between these different plants of the Illinois Steel Company was required to a considerable extent. The principal customers of the Illinois Steel Company for its products were the railroads, of course, the large customers and the automobile industry was a large customer (Tr. 326–327). Subsidiary companies of the United States Steel Corporation especially having plants located in the Chicago District obtained their raw material from the Illinois Steel Company. Subsidiary plants, besides the Illinois Steel Company at Gary were: The American Sheet and Tin Plate Company, the National Tube Company, and the American Bridge Company. They obtained their raw material for their manufacturing processes principally from the Gary works and South works. The Universal Atlas Cement Company had a plant in that neighborhood, located in, I think, the limits of Gary or right at East Chicago or just adjacent, on the shore of Lake Michigan, between Gary and South Chicago. The raw material for the manufacture of cement used by the Universal Portland Cement Company is ordinary blast furnace slag and partially limestone. It obtained its blast furnace slag from the Illinois Steel Company, from the South works and Gary works. The slag was transported from the works to the cement company plant by the E., J. & E. Railway. There was a subsidiary and plants of subsidiaries of the Steel Corporation located at Joliet. Besides the Illinois Steel Company, the American Steel & Wire Company has

two plants in Joliet. The plants of the American Steel &
131 Wire Company located at Joliet obtained its raw material from the Illinois Steel Company, from the Joliet works principally, some from the South works, and some from the Gary works. There were works of subsidiaries of the Steel Corporation located at Waukegan. The American Steel & Wire Company has a plant at Waukegan and the Cyclone Fence Company has a plant there (Tr. 327–329). As to the sources from which those plants obtained their raw material: The Waukegan plant of the American Steel & Wire Company obtained a part of its required materials from the Illinois Steel Company; the Cyclone Fence Company, I assume, obtained its raw materials in the form of wire from the American Steel & Wire Company. The Elgin, Joliet & Eastern Railroad Company does nothing with regard to these raw materials I have spoken of, except to transport them. The South Chicago works has a

capacity of something less than five million tons of ingots annually, about four and three quarters. Joliet has five to six hundred thousand tons of ingots (Tr. 329–330).

The steel products of the Illinois Steel Company, if not sold to the subsidiary companies that I have mentioned, were sold to the general trade. We reach these customers that were scattered over the country partially and principally by rail. We reach the trunk lines that went to those points of delivery over the E., J. & E. railroad (Tr. 330–331).

132 HENRY ROBINSON, called as a witness on behalf of the defendant, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. KNAPP

I am Clerk in the Accounting Department, Illinois Steel Company. I have before me a statement which purports to show the tonnages of raw material received at the Gary works of the Illinois Steel Corporation during the years of 1926; '27, '28, '29, and '30; I made that statement from records in the office of the Illinois Steel Company and it is correct. (Whereupon Defendant's Exhibit 5 was admitted in evidence, subject to objection as to relevancy.) (Tr. 332–333.) I have a statement of the same character relating to materials received at the South Chicago works of the Illinois Steel Company during the same time. I made that statement from records in the office of the Illinois Steel Company, and it is correct. (Whereupon Defendant's Exhibit 6 was admitted in evidence, subject to objection as to relevancy.) (Tr. 334.) I have a statement purporting to show materials received at the Joilet works of the Illinois Steel Company. I made that statement from the same source as stated before and it is correct. (Whereupon Defendant's Exhibit 7 was admitted in evidence, subject to objection as to relevancy.) (Tr. 335.) I have a statement purporting to show raw materials shipped from the Gary works of the Illinois Steel Company during the years 1926 to 1930 inclusive. I made that statement from records in the office of the Illinois Steel Company and it is correct. (Whereupon

133 Defendant's Exhibit 8 was admitted in evidence, subject to objection as to relevancy.) (Tr. 336.) I have a statement purporting to show material shipped from South Chicago works of the Illinois Steel Company. I made that statement from records of the Illinois Steel Company and it is correct. (Whereupon Defendant's Exhibit 9 was admitted in evidence, subject to objection as to relevancy.) (Tr. 337.) I have a statement purporting to show the materials shipped from the Joliet works of the Illinois Steel Company. I made that statement from records of the Illinois Steel Company and it is correct. (Whereupon Defendant's Exhibit 10 was admitted in evidence, subject to objection as to relevancy.) (Tr. 338.) I have a statement purporting to show the number of employees and the wages paid to employees during the years 1926

to '30, at the Gary works. I made that statement from records of the Illinois Steel Company and it is true and correct. (Whereupon Defendant's Exhibit 11 was admitted in evidence, subject to objection as to relevancy.) (Tr. 339.) I have a statement purporting to show the number of employees and wages paid to employees of the Illinois Steel Company at the South Chicago Works for the same years, 1926 to '30, inclusive. I made that statement from records of the Illinois Steel Company and it is correct. (Whereupon Defendant's Exhibit 12 was admitted in evidence, subject to objection as to relevancy.) (Tr. 340.) I have a statement purporting to show the number of employees and wages paid to employees of the Illinois Steel Company for the same years, 1926 to '30, inclusive, with reference to Joliet. I made that statement from records of the Illinois Steel Company and it is correct. (Whereupon Defendant's Exhibit 13 was admitted in evidence, subject to objection as to relevancy.) (Tr. 341.) These statements are itemized; but the gross figures are as follows:

134 The total material received at the Gary works, 12,000,000 odd tons in 1926, 10,000,000 odd tons in 1927, 12,000,000 odd tons in 1928, 13,000,000 odd tons in 1929, and 10,000,000 odd tons in 1930, or a total for the five years of over 58,000,000 tons. Materials received at the South Chicago works for the year 1926 was 7,000,000, nearly 8,000,000 for 1927, 7,000,000 for 1928, 8,000,000 for 1929, 9,000,000 for 1930, making a total of the five years of over 39,000,000 tons. The Joliet rat materials received for the year 1926 aggregated 1,700,000 tons; for 1927, 1,300,000 odd tons; 1928, 1,500,000 odd tons; for 1929, 2,100,000 odd tons; 1930, 1,500,000 odd tons; or a total of over 8,000,000 tons. The statement also shows the Gary works shipped, in 1926, 4,500,000 odd tons; in 1927, 4,300,000 tons; in 1928, 4,600,000 tons; 1929, 4,400,000 odd tons; in 1930, 3,200,000 odd tons; or a total of over 21,000,000 tons. The South Works, for 1926, shipped 3,311,000 tons; for 1927, 3,400,000 odd tons; for 1928, 3,300,000 odd tons; for 1929, 5,100,000 odd tons; for 1930, 5,300,000 odd tons; and for the five years, over 20,000,000 tons. The Joliet works shipped for the year 1926 over 800,000 tons; 1927, over 500,000 tons; 1928, over 600,000; 1929, over 1,000,000 tons; and 1930, over 600,000 odd tons, or a total of 3,700,000 odd tons (Tr. 342–343). The Gary works employed for 1926, 13,000 men; 1927, 11,000 odd; 1928, 12,000 odd; 1929, 12,000 odd; 1930, 12,000 odd; or a total of 61,000 for the five years. The wages and salaries for 1926 was over $23,000,000; for 1927, over $21,000,000; 1928, $22,000,000; 1929, over $23,000,000; and 1930, over $21,000,000; and for the five years, over $112,000,000. The South Chicago Works employed 7,600 ment in 1926, 8,000 odd in 1927, and 8,000 odd in 1928, 9,000 odd in 1929, and 10,000
135 odd in 1930, a total for the five years of over 44,000. Wages for 1926 were over $14,000,000; 1927, over $15,000,000; 1928, $15,000,000; 1929, over $17,000,000; 1930, over $19,000,000; or a total for the five years of over $82,000,000. Joliet employed for 1926 about

2,800 men; for 1927, over 2,500 men; 1928, over 2,500 men; 1929, over 2,700; for 1930, over 2,500 men; a total for the five years of over 13,000. Wages for 1926 were $4,600,000; for 1927, over $4,000,000; 1928, over $4,000,000; 1929, over $4,000,000; 1930, $3,600,000 odd; or a total of over $20,800,000 (Tr. 343–344).

136 THOMAS E. BOND, having been previously sworn, resumed the witness stand and further testified on behalf of the Defendant, as follows:

DIRECT EXAMINATION BY MR. KNAPP

I am Vice President of the Elgin, Joliet & Eastern Railway. I have been with the Elgin, Joliet & Eastern since June 1908. I have been employed in its Traffic Department. Prior to the time I came with the E., J. & E. I was in Denver, Colorado, employed by the Denver, Rio Grande Railroad in both accounting and traffic departments, and subsequently with the Colorado Fuel & Iron Company in their Traffic Department. I came to Chicago in May 1908, and I went with the Western Traffic Lines Committee, and was there for about a month before I went to the Elgin, Joliet, and Eastern, in whose employ I have been continuously since then, except during the war. I was with the United States Food Administration as assistant Western Traffic Manager. I was there from February 1918—about a year, I think it was—and then I was assigned to the Western Traffic Committee of the United States Railroad Administration and continued until March, I think, of 1920 (Tr. 345–346). As to the general duties of the work performed by the traffic department of the E., J. & E. road: The traffic department of the E., J. & E. road, or any railroad, is the point of contact between the public and the railroad; it has two functions, broadly speaking, in the traffic department—originates all new and changes in rates, rules, and regulations, division matters, and such as that, and its second broad duty is solicitation of freight for the railroads (Tr. 346–347).

137 Explaining briefly the process of making rates: Rates are made in two ways; I am speaking now in general terms; rates are made either by the Interstate Commerce Commission as a result of an order, or by the state Commission having jurisdiction over such roads, or they may be made by railroads themselves, in committees. A shipper may propose a change in a rate. A railroad to whom that change is suggested analyzes it and if it feels it is right it will be acted upon or in some cases, even if it feels that it should not be properly acted upon, it submits it to an appropriate rate committee, and in this jurisdiction there are the western trunk line committee, the Illinois Freight Committee, the Central Freight Association. The Elgin, Joliet & Eastern Railway is a member of each one of these committees. If the rate affects Illinois matters it comes under the jurisdiction of the Illinois Freight Committee, and the Elgin, Joliet & Eastern Railway Traffic Department will prepare an

application for a rate change and submit it to the Illinois Freight Association, which is put on a docket; and the public is notified that there is a proposed change of rate, and I speak of rates, as the case may be; and if there are any other interests besides the proponent, they may ask for a hearing; but whether they do or not, the subject is placed on the docket and it is considered at the next general meeting of the Illinois Freight Association (Tr. 347–348). The general meeting of the Illinois Freight Association—this is true of the other associations—as it is an organization composed of general freight agents of the lines, members of the association; they have a meeting and consider this proposal and approve or disapprove it as the case may be. If they disapprove it the proponent line or any one else interested may appeal then to the Executive Committee of the
138 Illinois Freight Association, which is composed of chief traffic officers of the road members of that committee. That is considered at their meeting, and further hearings may be held on the subject at which the shippers interested may appear; and it is disposed of by the Executive officers of those roads. If it is approved the rate advice is issued, and all railroads desiring to do so can publish that rate. If it is disapproved the interested line or lines have an opportunity for taking independent or individual action, as it is called. In other words, they may disagree with or disregard the action of the Committee and take independent action by publishing the rate, and, of course, any rate that is published is subject to review by the Interstate Commerce Commission or the state commissions, as the case may be. That practice is followed by the Elgin, Joliet & Eastern Railway Company and has been during the time I have been connected with the traffic department (Tr. 348–349). I spoke of the possibility of a railroad making a rate individually after they had gone through this process that I spoke of, when it was not satisfied with the decision of the Committee. Such rate would be published in the tariff of the individual line or the committee tariff, as the case may be. The Elgin, Joliet & Eastern Railway has very seldom made a rate in that way; it has made some. I never made a rate on independent action for subsidiaries of the United States Steel Corporation. I remember the fact that the only independent rates that we have ever established have been gravel, sand, and stone rates on short hauls. Subsidiaries of the United States Steel Corporation do ask the E., J. & E. to change the rate. If it does, the subject is handled in exactly the same way as I have described, exactly the same as if a request were made from any other shipper, handled the same as a request from any other shipper
139 would be handled (Tr. 349–350). As to whether the Interstate Commerce Commission has established rates for the E., J. & E. that cover any substantial amount of its business. Yes; a very large number of rates in which the E., J. & E. is interested have been established by the Interstate Commerce Commission, class rates applicable in the Central Freight Association territory

and Western Trunk Line territory and Illinois Freight Association territory; there are commodity rates on cement applicable in those territories; and the rates for iron and steel in the Central Freight Association and the Illinois Territory; rates on stone, gravel, and sand, from short haul points into Chicago District; and the rates themselves in the Chicago District, and by the Chicago District I mean the district adjacent to Chicago, including point such as Hammond, Whiting, South Chicago, Gary, and so forth. It is a part of the duty of the Traffic Department to make tariffs covering rates and changes of rates. By "published" is meant that the rates used by a railroad, the charge for service must be published and filed with the Interstate Commerce Commission and all state commissions, posted at stations from which the rates apply. That is the method always followed by the Elgin, Joliet & Eastern Railway. It does not perform any service of any kind for which rates have not been established by the tariffs duly filed (Tr. 350–352).

Explaining briefly the manner of making divisions of rates, as it affects the E., J. & E. Railway: Divisions are a matter of agreement between the carriers. There are certain underlying principles, however that are observed in making divisions of through joint rates between carriers. The divisions in effect with the E., J. & E. today
140 are substantially on the same basis that they have always been since the E., J. & E. was an operating company. They were therefore made prior to the organization of the United States Steel Corporation. There have been modifications and changes in amounts in specific commodity rates and generally speaking, all on the same basis that they were prior to the acquisition of the E., J. & E. by the United States Steel Corporation. Some divisions were issued in 1892 and are still being used in the accounting offices to settle accounts between carriers interested. However, as a rule the division sheets, the percentage sheets have to be reissued because they wear out, and also because of changes that may occur in addition, of stations, and changes in routes, and that sort of thing (Tr. 352–353). As to how divisions are made between the Elgin, Joliet & Eastern and its connections. Substantially on the same line, divisions may be broadly divided into two classes; the percentage arrangement, by which I mean a specific percentage of a rate which accrues regardless of the commodity or the weight or anything of that kind: and specific divisions which are at least with our line applied to heavy commodities, such as stone, sand, gravel, and coal. Those specific commodity divisions are named in cents per 100 pounds, or per ton, as the case may be, and they vary with the rate as it may go up or down; but the percentage arrangements are made on the basis of the mileage, and perhaps constitute the basis for a majority of the division of rates of the E., J. & E. in its handling of business with other lines (Tr. 353). By the division of a rate I mean the portion of the charges accruing to several lines handling the freight from

the point of origin to the destination, apportioned in the ratio of its haul, or on some other agreed basis. In other words, a through rate is made from the point of origin to the point of destination,
141 although the haul is made over several lines of road, and the earnings or the amount of the freight charges paid to each is apportioned among them, out of the total (Tr. 354). In the making of these divisions, which we have made in behalf of the E., J. & E. with other railroads, neither the United States Steel Corporation, nor any one connected with it has taken any part. No subsidiary of the United States Steel Corporation or any officer or employee of said subsidiary has taken any part in making these divisions. I mean literally, no subsidiary of the United States Steel Corporation, or any employee, has taken any part in making these divisions that I have made between the E., J. & E. and other railroads. The business of the United States Steel Corporation or any of its subsidiaries has not been used in any way to aid us in making bargains wth other roads as to the proper division of rates. I have here a map. This map is gotten out by the Traffic Department. It fairly represents the location of the E., J. & E. and its connections with other railroads entering the city of Chicago. It is used for advertising purposes, principally, in our department. (Whereupon Defendant's Exhibit 14 was admitted in evidence) (Tr. 356–357).

The Elgin, Joliet & Eastern Railway Company does business with a great many other shippers than the Steel Corporation or subsidiaries of the Steel Corporation (Tr. 357). Explaining our method of seeking business of outsiders: We have a soliciting department, which is under the control of the traffic manager of the railroad; the soliciting department at present consists of an assistant general freight agent and five outside representatives. We have one man that solicits business in the Central Freight Association territory; another solicits business in the Illinois and in the Southwest,
142 and still another in the Northwest, another in Seattle and the Pacific Coast territory, and another man that devotes his entire time to Chicago and vicinity. Those men are traveling practically all of the time with the exception of the Chicago man because we have no outside agent, that is, I mean no outlying agencies, as the term is usually expressed (Tr. 358). As to the basis upon which these solicitors solicit business in the various territories in which they work: We show to the shipper or prospective shipper that we can give him better service than he can secure through other means. We operate a Belt Line around the city of Chicago and connect with every railroad entering Chicago. We believe that we can give better service through that Belt Line than the shipper can secure by sending his freight through the congested Chicago District, that is the principal basis for our solicitation. We attempt in every way to give the shipper the best service possible in matters of tracing his cars. We have for example what we call a voluntary passing report, which is particularly used by the lumber and flour shippers and by

this means a postal card, or some other means of communication is sent to the shipper when his car arrives at east Joliet, which is our break-up yard at Joliet; this tells him the time we received the car, the time it will be delivered to the connecting line, so that he can tell very closely just what time that car will reach destination; and through that information he is saved a lot of unnecessary tracing, and he can divert his car, stop it in transit, or do what he pleases with it; he knows where it is and that method of the passing report information is securing a good deal of business for our line (Tr. 358–360). We handle almost every commodity which is made;
143 our solicitors for the Belt Line traffic do not confine their efforts to any particular commodity, but I might say that coal, lumber, petroleum, grain products probably form the largest individual items of the Belt Line or overhead traffic. We solicit subsidiaries of the United States Steel Corporation just the same as we do any other shipper (Tr. 360). As to whether they route freight over our line as a matter of course without regard to our solicitation: The fact is that we have to solicit business from subsidiary companies where it is competitive the same as any other railroad does. They do not ship all of their business via our line. The subsidiary companies of the United States Steel Corporation normally furnish us with about 60 per cent of our tonnage, and about 40 per cent is received from other sources. There are a great many industries not in any way connected with the United States Steel Corporation located at stations along the line of the E., J. & E. (Tr. 360–361). As to what there is in the service that we can give them that is attractive to industries along our line: The Elgin, Joliet and Eastern Railroad being a Belt Line connecting with all other lines reaching Chicago, offers a shipper a choice of routes which ordinarily cannot be afforded by a single trunk line and for that reason we are rather successful in getting a very substantial portion of the business from any and all of the shippers located at stations on our line (Tr. 361–362). The E., J. & E. railway company is a party to a very great number of tariffs. I think that we are a party as an initial or delivering line to about two thousand tariffs; besides that we are a party to a great many tariffs as an intermediate line; I do not know how many. Between five and six hundred industries or shippers on the line of the E., J. & E. or adjacent to it are served by it. We do not serve them all by direct tracks into their plants. Some of them we serve through the medium of a switching line, which
144 does have direct access to their plant and we absorb the switching. I have here a document called "Directory of Industries." That document is a list of all industries served directly by the E., J. & E. or indirectly through the absorption of connecting line switching. That gives the name of the industry and the station at which they are located, and the character of business in which they are engaged. It is distributed to other railroads, it is sent to shippers, in fact, they send it to any one that may have any

use for it, and it is principally, of course, to get information to shippers and other railroads and to our own men as to what industries can be served by the E., J. & E. That was prepared in our department. It is commonly and currently used in the Department for the purposes I have mentioned. (Whereupon Defendant's Exhibit 15 was admitted in evidence.) (Tr. 361–363.)

The E., J. & E. Railway Company does not manufacture itself, any steel products—or anything of that sort, that it transports. It does not produce or mine itself, any products of any kind. It serves in the way I have explained any shippers who are competitors of subsidiaries of the Steel Corporation. A few are: The Youngstown Sheet & Tube Company is a competitor of the subsidiaries of the United States Steel Corporation and has a plant on our line served by our line. Also by the Indiana Harbor Belt. The Inland Steel Company has a plant reached through switching arrangements by our line at Chicago Heights. There are a number, I don't know—of steel plants, I don't exactly know whether they are competitive with subsidiaries or not, such as the La Salle Steel Company which is a fabricator and I really could not say whether it is a competitor of the Steel Corporation subsidiaries or not. We also serve a great many cement companies although we have no other plants
145 on our line except that owned by the subsidiary of the United States Steel Corporation, but we do secure and handle a very large volume of cement, shipped by competitors of this subsidiary of the United States Steel Corporation. We have never had any complaint presented to the Interstate Commerce Commission to the effect that we have favored in our service subsidiaries of the Steel Corporation, as compared with other customers (Tr. 364–365).

Concerning our practice with regard to furnishing tracks to industries: We will furnish tracks for industrial purposes to any industry located on our line, served by our rails where, in our opinion, the business of the industry will warrant the construction and maintenance of those tracks. I think we have something like 103 industries on our line in which we own the tracks: I would not be positive about the number, although I counted them once, and I think that is the number. The tracks in the Gary plant of the Illinois Steel Company are the only tracks that we own on property belonging to a subsidiary in Gary: unless you would call the Buffington station at the Universal Atlas Cement located in Gary; I believe it is in the city limits, but we carry it as a separate station, Buffington. There are other subsidiary plants located in Gary, The National Tube Company, the American Bridge Company, the American Sheet & Tin Plate Company. They own the tracks within their plants; at least we do not, and I suppose they do. So that each shipper has a right to determine whether it furnishes its own tracks or whether we furnish them. If we furnish them, we have exclusive use of them and can use them for any purpose (Tr. 366–367). I have here a

statement that is entitled "Industrial tracks owned and main-
146 tained by the Elgin, Joliet & Eastern Railway Company
located on plants of Industries." That statement was prepared under my direction, from data given to us by the Chief Engineer's office and from information kept in the traffic department. This is the average of a five-year period from 1926 to 1930, five years, inclusive. I have here five more statements that bear the stamp, the same legend at the top, one for the year 1926, one for the year 1927, one for 1928, one for 1929, and the other for 1930; they were likewise all prepared under my general direction. The first one that I mentioned is the average of all of them (Tr. 367–368). The statement shows the industrial tracks which are owned and maintained by our line located on the plants of the industries; that is, on the property of the industry; it shows first, the tracks, the mileage in each plant; the cost of the tracks, the cost of the track per mile; the cost of the maintenance; the interest on the cost of the tracks; and the total cost of maintenance and interest. It further shows the number of cars passing over the tracks and the number of tons passing over the tracks, and it shows the cost of maintenance and interest per car passing over the tracks and the cost of maintenance and interest per ton passing over the tracks. It shows the average tons per car, and the earnings on switching wholly within the plant; that is to say, intra-plant switching, and it gives this information for the Illinois Steel Company plant at Gary, Indiana, the Illinois Steel Company plant at South Chicago, the Illinois Steel Company plant at Joliet, Illinois, the Universal Atlas Cement Company plant at Buffington, Indiana, and the total of these four plants, and another column showing the tracks in all of the plants of all subsidiaries of the United States Steel Corporation included in this study. It also
shows the tracks located on property of outside industries not
147 affiliated with the United States Steel Corporation, and then
a composite for all industries in the last column; and I would explain that this sixth column, which is headed "All plants at all subsidiaries of the United States Steel Corporation", is a composite not only of the four plants that are specified but also of some other tracks that are located on property owned by these companies, but not located within the plant's confine; that is, on the tracks at Stockton, Indiana, and a number of tracks that have been thrown together in this column (Tr. 368–370). Now referring to the one covering the average only, as to what it shows in the way of cost per car, passing over the tracks which serve the industry or subsidiary, including maintenance and interest: This cost which is, as you see, maintenance and interest—figured on 5 per cent on the cost of the track, at the Gary plant of the Illinois Steel Company—averages 56.68 cents per car, or 13 mills per ton. The South Chicago plant average per car of maintenance and interest is 60.66 cents and 14 mills per ton, and the Joliet plant is 79.47 cents per car, or 18 mills per ton. The cement plant at Buffington, the cost is 56.48 cents per

car, or 10 mills per ton, and the total average of all these plants, that is, these four plants, is 59.86 cents per car, or 13.7 mills per ton. Now then, taking in all the other tracks of all subsidiaries of the United States Steel Corporation, the average is 61.76 cents per car, or 14.2 mills per ton; outside industries, that is to say, those not affiliated with the United States Steel Corporation, the cost per car is $1.3454, and the cost per ton is 3.45 cents. In other words, the cost to the company of serving outsiders is almost double per car the cost of serving the Steel subsidiaries (Tr. 370–371). In the cost
148 per ton it is almost three times. In the plants of the Illinois Steel Company that I have referred to, the company obtains an earning for switching, internal work, I guess, is what you call it. That is on the basis of $5 per car and $1.50 per ladle, except for ladles over 50 tons, we charge $6 a ladle. We also have a charge per car and per ton which is higher on business switched to and from the docks, such as coal coming off of the lake, the rate as I recall is $8 a car, and on finished steel shipped from the mills to the dock, 40 cents a ton. There is no comparable earnings on these tracks in the plants of outsiders because they do not have any intra-plant switching, that is, nothing to amount to anything. They are too short (Tr. 371–372). The cost of these tracks is arrived at by our valuation engineers working with the representatives of the Interstate Commerce Commission. The basic cost of it is the cost of the reproduction in 1914; the cost figures used to serve for the cost of reproduction being the cost for the five year period preceding 1914, that is, from 1909 to 1914; except in some special cases where the cost could be actually determined and then they used the actual cost. Then from that figure all of the additions and betterments and retirements have been figured on the actual cost except if part of the property which had been constructed prior to 1914 was retired, the retirement figure was that used in the 1914 cost. We start then with the cost as fixed by the Interstate Commerce Commission as of 1914. As to why we start with that, and why we didn't find the actual cost: It was impossible, as I understand it, in all cases to get the actual cost; these tracks have been in place for many, many years in some cases. But we use the Interstate Commerce Commission totals for the tracks within the plants of subsidiaries of the
149 Steel Corporation, also for the tracks on plants of independents. (Whereupon Defendant's Exhibits 16, 17, 18, 19, 20, and 21, respectively, were admitted in evidence, subject to objection as to relevancy.) (Tr. 373–374.)

I have here a statement entitled "Car Loads shipped by Illinois Steel Company via E., J. & E. Railway Company." I prepared it myself, from the records in my office. This shows the car loads taken from our records, which we keep for all industries on the line. This statement covers the years 1926, '27, '28, '29, and '30. It also covers shipments from Gary, South Chicago, and Joliet. (Where-

upon Defendant's Exhibit 22 was admitted in evidence, subject to objection as to relevancy.) (Tr. 375.) The division of through rates between the E., J. & E. and any other company with which there was a through rate is subject to review by the Interstate Commerce Commission. The clause of the Interstate Commerce Commission law enables the Commission to fix the division (Tr. 376).

CROSS EXAMINATION BY MR. COLLINS

I say that when the E., J. & E. builds a track within the plant of a shipper on its line; the railroad retains the exclusive use of the intra-plant track. That is the fact as to the track within the Illinois Steel Company plant at Gary. Referring to Government Exhibit B, page 36, rather to a letter beginning on page 36 of that exhibit, addressed to Mr. Filbert, Comptroller of the Steel Corporation, by Mr. Banks, president of the E., J. & E., and at page 38 of which he says:

"We have about one hundred and forty miles of track to
150 maintain within the Gary plant, which costs us more money per mile for maintenance and renewals than our main line mileage. The Steel Company operates as many or more switch engines within the Gary plant than the E., J. & E. railroad and contributes nothing whatever to the maintenance and renewals of the tracks used by their engines, and many of the tracks are used exclusively by their engines."

The letter was written and dated July 9, 1914. To some extent I imagine that particular situation is still true, that is to say, the Illinois Steel operates some engines down there, but I question the ratio of use; however, the Illinois Steel Company has some small engines down there that do some work that we do not want to do and go into places where we do not want to send our engines. They use the tracks belonging and maintained by the E., J. & E.; probably some of them, yes, not necessarily exclusively, not (Tr. 376–378).

151 GRANT E. CHESSMAN, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. KNAPP

I am Chief Clerk, Accounting Department, E., J. & E. Railway Company. I have been employed by the E., J. & E. Railway for the past approximately 16 years, always in the Accounting Department. One of the paragraphs (numbered 9—page 12) in the petition here alleges that the affairs of the E., J. & E. are conducted under the same rules and regulations as the affairs of the United States Steel Corporation. I do not know of any rules or regulations that are common to the two companies. So far as accounting is concerned, the rules and regulations that govern our accounting are those of the Interstate Commerce Commission (Tr. 378–379). I have here

four pamphlets, one marked "Classification of Operating Revenue and Operating Expenses of Steam Railroads", and the next "Classification of Income Profit and Loss and General Balance Sheet Account Steam Railroads", and the next one, "Classification of investment in road and equipment of steam railroads", and the next one "Interpretation of Accounting Classifications prescribed by Interstate Commerce Commission for Steam roads." Those are the rules and regulations which govern our accounting system. They are issued and put out by the Interstate Commerce Commission. I could not state offhand how many separate accounts those documents require the railroad to keep, but it runs somewhere through 700 numbers and there are several hundred of accounts. (Tr. 379–380).

152 Mr. KNAPP. I ask that these be introduced in evidence marked "Defendant's Exhibits 23, 24, and 26."

Mr. COLLINS. I would like in the first place, before making an objection to ask counsel to point to the paragraph that he has in mind.

Mr. KNAPP. It is marked 9, on page 12 of your petition, and says: "Defendant's officers and employees and those of all said other subsidiaries are subject to and governed by the same rules, regulations, and plans as are the officers and employees of the Steel Corporation promulgated by it for its own immediate employees."

(Whereupon Defendant's Exhibits 23, 24, 25, and 26, respectively were admitted in evidence, subject to objection as to relevancy) (Tr. 380–382). Every item of income coming to the E., J. & E. is entered on the books of the E., J. & E. It is entered on the books in accordance with the rules and regulations just introduced in evidence. Every item of outgo of the E., J. & E. is recorded on the books of the E., J. & E., in accordance with these rules and regulations. As a matter of fact, our department is subject to check on the way in which we keep our accounts. The Bureau of Accounts of the Interstate Commerce Commission sends several men who spend several months at a time going over our accounts quite frequently, and they go over them very minutely, every voucher, every bill, every journal entry is examined. If any transaction takes place between the E., J. & E. and the United States Steel Corporation or any of the subsidiaries of the United States Steel Corporation it is entered on the books of the E., J. & E., in accordance with these

153 rules and regulations. The books of the E., J. & E. record all of the assets of the E., J. & E. They do not incorporate into the accounts of the E., J. & E. the assets of any other company (Tr. 383–384). None of the assets, funds, moneys, or properties of any kind of the E., J. & E. are mingled with, or commingled with, or mixed with properties or assets or funds of the United States Steel Corporation or any of its subsidiaries, as shown by books of the E., J. & E. There are no other assets of the E., J. & E. of any kind that are not shown upon the books of the E., J. & E. The books of

the E., J. & E. show all their assets, funds, and accounts (Tr. 386). One of the charges in the petition in this case is to the effect that no important expenditure can be made by the E., J. & E. without being submitted to the United States Steel Corporation; I am calling attention to the fact that it is broad—no important expenditure can be made without submitting, etc. Now as to the different kind of expenditures that were made by the E., J. & E. railroad: There are several kinds, naturally, there are capital expenditures covering the improvement and construction chargeable to your property investment account. There are also expenditures for operation and maintenance and things of that nature. As to the more important matters included in maintenance and operation: There are many thousand of dollars spent each year in renewal of rails, ties, right of way maintenance, and track laying and surfacing; freight train car repairs, and your improvements to transportation facilities and your wages of your train men and engine men (Tr. 387). I have here a statement bearing at the top these words: "Elgin, Joliet & Eastern Railway Company." That was made by me. The left hand side of the page is a statement of the amount expended for
154 maintenance and operation for 1926, $17,275,369.37; all of our operating expenditures for maintenance and operation are comprehended in those figures. Next below that is the amount expended and charged to capital account, $546.316.94: Capital accounts are expenditures for improvement, construction, which are properly chargeable to investment accounts, under the classification of the Interstate Commerce Commission. Generally speaking, it means additions and betterments (Tr. 388). As to what expenditures the railway company has in the past submitted to the United States Steel Corporation: They have submitted to the United States Steel Corporation for recommendation certain expenditures over $5,000 for a period and at another time over $10.000. Those are confined to capital accounts. The appropriation as has been described here starts with some department of the railway company and is addressed to the president and passed on by the president; the president of the E., J. & E. railroad, and he recommends it and if it is above the amount that you have mentioned, whatever it is, it is sent down to the United States Steel Corporation for their recommendation. Not in all instances; certain appropriations over five or ten thousand are not sent down to New York for their recommendation. They are expenditures for renewal of rail, increase of weight of rail, and renewal of bridges where a bridge is renewed where it would have cost in excess of five or ten thousand dollars, and the expenditures for widening embankments. (Whereupon Defendant's Exhibit 27 was admitted in evidence) (Tr. 388–390).

Mr. KNAPP. Now as I have done before, I will briefly explain this document: In 1926, as an illustration, it shows expenditures for maintenance and operation of over $17,000,000; expenditures charged

to capital account $546,000; and the amount expended to
155 appropriations upon which recommendation of the Steel Corporation was obtained $317,000; in other words, the percentage of total expenditures in that year which were submitted to the United States Steel Corporation was 1.78 per cent of the total expenditures for the year. It also shows again for the year 1926 that the number of appropriations recommended by the United States Steel Corporation was 26 and the number of appropriations not submitted for recommendation to the United States Steel Corporation was 251; and the corresponding years run along about in that line (Tr. 391).

The WITNESS. As to whether any appropriations were sent down to the United States Steel Corporation when the recommendation of the Steel Corporation was not requested: Surely, we send a copy of the appropriation, whether a recommendation is asked of the Steel Corporation or not. Our office does not, but I believe our president's office does. That is merely for a matter of record and statistics. I check over these appropriations when they go down, and also when they come back from the Steel Corporation. We review them from the accounting aspect of the appropriation. I know of no appropriations that were ever sent down to the United States Steel Corporation for approval that were disapproved. I would know if, during the time of my services there, any had been disapproved (Tr. 391–392).

I have made a statement showing during the year 1917 that the cost of coal for the E., J. & E., the coal it purchased from the United States Fuel Company at Westville, and adding to the price at the mine the transportation cost, thereby arriving at the cost at destination. In that case I took the price at the mine made by the United States Fuel Company during the year 1917 by quarters, the price we actually paid, and added to that five mills per ton mile for transportation. I used five mills per ton mile because that
156 is the figure the Interstate Commerce Commission originally gave us to charge to the investment account, as the proper charge for transportation of material to be used for the company's own purposes; it is also a figure which has been used consistently in coal hearings as the cost of transportation over carriers own lines. It is the accepted figure to measure the actual cost of transportation to the company when it is transporting its own material (whereupon Defendant's Exhibit 28 was admitted in evidence, subject to objection as to relevancy) (Tr. 417–418).

I have here a document which shows the estimated cost of purchasing mine run coal from other than subsidiary companies at Westville. The first column gives the price at the mine; that is the price which is averaged week by week, taken from the Black Diamond Magazine. (There was an understanding with the counsel that the Black Diamond may be considered to be the representative trade journal of the trade and that the quotation market prices are made

currently and are accepted in the trade showing the market prices.) And then the next column shows the foreign road proportion of freight charges to the E., J. & E. junction. In other words, if we bought from other shippers at the mine and it would come over another road to the junction of the E., J. & E., the E., J. & E. would have a through rate from the point of shipment to the point of delivery on its line, therefore it was out of pocket the amount of money it had to pay to the foreign road. Out of pocket payment is what is shown in the second column. The third column shows the cost per ton to haul from the E., J. & E. junction to the final destination; in other words, to the coal chutes where it would be used and that is the rate of five mills per ton mile. (Whereupon Defendant's Exhibit 29 was admitted in evidence, subject to objection as to relevancy) (Tr. 419–420).

157 I have another statement which shows a comparison of the cost of the mine run coal first if purchased from subsidiaries and second if purchased from outside companies during the year 1917. It is a comparison of cost as indicated by the two preceding statements.

(Whereupon Defendant's Exhibit 30 was admitted in evidence, subject to objection as to relevancy) (Tr. 421).

158. CHARLES H. KENZEL, called as a witness on behalf of the Defendant, having been previously sworn, further testified as follows:

DIRECT EXAMINATION BY MR. KNAPP

I am Purchasing Agent of the E., J. & E. I have been Purchasing Agent 20 years, and was in the department before that. When I was on the stand before I said that the E., J. & E. bought certain of their supplies from subsidiaries of the United States Steel Corporation. As to the character of those purchases: They would be various finished products of steel, such as plates, shapes, bars, locomotive tubes, rails, fastenings of various types, and light sheets, maybe one or the other, light sheets, fencing, wire, electrical wire. These articles would not be upon what is called the price list. The price list, speaking generally, is mostly raw material (Tr. 393–394). As to how I would know whether we were getting the proper prices when we bought from the subsidiaries of the Steel Corporation: The majority of those I think have a standard market price. We check the price against the current market prices. If there were any discrepancy between prices that were asked and the current market price we took it up with the manufacturer for adjustment. The result was a credit memorandum. If there were any overcharges over and above the market price we would get a credit memorandum. The disposition of scrap originates by a report from the stores department to the Purchasing Agent of the E., J. & E., indicating

what they have for sale, and an invitation is sent out to the various scrap dealers. The store keeper would describe the scrap by tonnage and character of scrap, and it is described in what is known as
159 the storekeeper's classification, railroad storekeeper's classification, and afterward or since the Government control, it has been known as the A. R. A. classification. Describing one or two of those classes: There is what is known under the rule as short rail or re-rolling rail, and that is one item; and there would be No. 1 railroad wrought, and No. 2 railroad wrought, railroad mill scrap and cast scrap and heavy melting steel (Tr. 394–396). As to whether there is any association that prescribes or defines the classification: This classification originated with the railway storekeepers and later on it has been modified in recent years, I believe, by the association of scrap dealers. This Railway Storekeepers afterwards became a division of the American Railway Association. When we received notice from the storekeeper that he has scrap he wants to sell, an invitation is sent out to the scrap dealers asking them for price quotations. We customarily send notices to—it might vary, it averaged ten or twelve scrap dealers. In sending out such notices to the scrap dealers we sent notice to the Illinois Steel Company, also. When the persons to whom we had sent notices replied, their replies of course would be their bid, and their bids would be tabulated. After we got a bundle of those replies—I do not care to introduce them in evidence—on this tabulation we indicate the name of the bidder. In each column we describe the class of scrap under the class of scrap and insert the bid of each company. We accepted the highest bid. We did not always accept the bid of the Illinois Steel Company, unless it was the highest. I take this one off of the top of the pile because it shows the bids of Leopold Cohen Iron Company for $11.25; this scrap was scrap rail and the Illinois Steel Company bid $14.50; the Ohio Iron Metal Company, $11.75. The Illinois Steel bid was accepted, because
160 in that case the Illinois Steel Company was $2.75 higher than the next highest bid. We did not inform the Illinois Steel Company that their bid was $2.75 a ton higher than the next bidder. As to whether, if they had known that, they would probably have withdrawn their bid: Well, we might not give them a chance. We never made any sales to the Illinois Steel Company unless their bid was the highest and best—equal or higher, I will put it that way. There were none of the other subsidiary companies in this region that were bidders for scrap. The Illinois Steel Company was the only Steel Company that smelted iron and therefore used scrap (Tr. 396–398). Now this bundle of papers that I have brought in here cover—that one will show for one year. The whole file there is one year. I believe it is 1930. That is typical of the way in which we handle business regularly and all of the time. Generally speaking, we always sell to the highest bidder, without exceptions of any importance. That was generally true whether the highest bidder was

the Illinois Steel Company or somebody else—rails or anything else, if an outsider bid more than the Illinois Steel Company, the outsider got it (Tr. 399).

CROSS EXAMINATION BY MR. COLLINS

In connection with the statement that I made, namely, that with some possible exceptions we always sold our scrap to the highest bidder, my attention is called to Government Exhibit J, page 7, which is a letter dated April 25, 1917, to Mr. J. A. Farrell, president, United States Steel Corporation, from the president of the E. J. & E. Railway, and down in the corner here it says, "Comptroller's office, 5/4/17, and given Mr. Kenzel." The letter states:

161 "We sell all of our scrap to the Illinois Steel Company and that company fixes the prices that they will pay for the scrap. It is based on the price shown in the Iron Age Review for the week's shipments as made; however that does not apply to our rails. We could sell our rails to outsiders at higher prices than paid us by the Illinois Steel Company. We are therefore, so far as our company is concerned, placed at a disadvantage. We have no means of making a saving either in our sales or our purchases" (Tr. 400–401).

As to whether, in view of this statement, I still say that the prices have always been as I have testified: I testified as to the present: I did not testify particularly to that date. My knowledge of the sale of scrap in the Purchasing Department would indicate that we did not sell all of our scrap to the Illinois Steel Company even at that date. We sold scrap at that time in the same way we are selling it now (Tr. 401). I was in the Purchasing Department at that time. I had no knowledge of that letter. Where reference is made in the testimony to coal mines down in the Danville District, the true name of the coal company is the United States Fuel Company. There is no other company that we have any interest in down in that region (Tr. 402).

162 ALEXANDER G. BANKS, having been previously sworn, was recalled and further testified on behalf of the Defendant:

DIRECT EXAMINATION BY MR. KNAPP

My attention is called to a letter which appears as Government Exhibit J, at page 5, from me to Mr. Farrell, dated April 21, 1917, which reads:

"DEAR SIR: We have an invoice today from the United States Fuel Company covering shipments of coal to our company from March 1927 to April 7, in which the price of coal has advanced fifty-eight cents per ton; and I have today written for some information in regard to this advance. The first intimation we had was the rendering of the bill, this advance in fuel will cost the E., J. & E. road between $350,000 and $400,000 a year. The increase of price

of all materials used by the E., J. & E. road together with the tremendous advance made in labor, will leave us in such position that we will be showing red figures for the E., J. & E. road. So far as our railroad is concerned, we have not very bright prospects for net earnings" (Tr. 403–404).

That is followed by a letter from Mr. Farrell to me dated April 23, 1917, which says:

"Replying to yours of the 21st of April the price for coal from the United States Fuel Company which you mentioned, is the inter-company price established by the price list for the current quarter of 1917. I understand your company receives regularly a
163 copy of this list. The price of coal furnished you by the subsidiary companies for the past five years or six years have been based accordingly.

"While the advance of 58 cents appears substantial, it is only relative to increases in price for coal generally."

"In fact prevailing market prices for coal I believe are materially higher than the inter-company's price list figure" (Tr. 404).

That is followed by a letter from me to Mr. Farrell dated April 25, 1917, which reads:

"Replying to yours of April 23rd with reference to advance in the price of coal from the United States Fuel Company, we have never received any of the inter-company price lists and are only advised of changes in the prices of coal when we receive the invoices. Everything purchased by the E., J. & E. Railway Company from any of the subsidiary companies, and we make no purchase outside of any material that can be supplied by subsidiary companies, we have to pay whatever price is marked on the invoice and it is the market price at the time of shipment.

"We sell all of our scrap to the Illinois Steel Company, and that Company fixes the price that they will pay for the scrap; it is based on prices shown in the Iron Age Review for the week the shipments are made. However, that does not apply to our rails. We could sell our rails to outsiders at a higher price than paid us by the Illinois Steel Company. We are however, so far as our company is concerned, placed at a disadvantage. We have no means of making a saving either in our sales or our purchases" (Tr. 404–405).

164 I have this to say about that correspondence: I imagine that I was pretty mad because the price of coal had been put up at a rather high price and I did not call into consulation the man who knew about the selling of the scrap, and the purchasing of materials—I am like a good many other poor railroad presidents—I guess that I sometimes do not go and get the proper information before blowing off. However, it does show that I surrounded myself with a good lot of men who did get good prices and watched our purchases. Here is a letter from Mr. Farrell to me, coming next, and it reads (Tr. 405–406):

"Acknowledging receipt of your letter of the 25th of April concerning United States Fuel Company price for coal, for the second quarter of 1917. We understand the inter-company price list has been sent you quarterly but note that this has not been the case. However the prices charged you right along for coal have been those generally shown by the list in question. You mention that you pay subsidiary manufacturing companies their current market prices for finished material purchased from them. The United States Fuel Company price for coal is likewise their price for all of their sales. The company's price is governed largely by commercial prices prevailing for coal in the Chicago District. For a long time past it has been relatively low, and generally we are advised somewhat lower than the average price coal commanded in the district. But their prices have not returned them a fair profit on the investment. Now, however, that prevailing price has advanced
165 and largely they have followed the market to a certain extent. As you know, their price of $1.80 for the second quarter is very much below current prices generally.

"The Illinois Steel Company has just made a large purchase of coal at about $3.00 per ton. The increase in wage rates effective May 1st will increase the United States Fuel cost about 20 cents per ton, and on the basis of these costs it will be a question whether $1.80 per ton will be commensurate. This will undoubtedly be carefully considered before the prices are fixed for the second quarter. It is appreciated this advance in price will increase your operating expenses, but this is also true of many of your other supplies and expenses. It is something every railroad is facing under prevailing conditions.

"We have written you in detail on this matter, to present a complete exposition of the situation in order that you may fully understand the price in question was arrived at from a full and fair consideration of all parties concerned."

(Tr. 406-408) Concerning this coal matter: When we first began we had the assurance that we would get our coal at the same price as all the other subsidiary companies of the Corporation, which was practically cost, and that in no case would we have to pay more for coal; beyond that of course, I paid no attention to it; and then came up this question where we had a rather large advance in
166 the price of coal, and as we used a great deal of coal and paid out a great deal of money for fuel, it represented a very large increase in our expenses, and I think I was pretty mad about that time, on seeing this heavy advance which could not be helped, the wages to the miners and all expenses had increased the cost of production of coal for everybody, but if I could do anything and get my price down, of course, I was going to do it, when it came to the scrap and so forth, and I knew we were selling scrap to the Illinois Steel Company. I did not take the trouble to discuss that with Mr. Rogers and our Purchasing Agent, just what our relations were on

scrap and the sales of it. I went off half cocked but my staff down in here was watching our affairs and seeing that we got our proper prices and the best prices that were to be obtained in the market on anything we had to sell, and they were also watching our prices for what we had to buy (Tr. 408–409). I was first employed by the E., J. & E. Railway in 1893. And the Steel Corporation was organized in 1901. When I went with the E., J. & E. it was a complete Belt Line from Waukegan to Joliet and around to Porter. At that time it had divisions of rates and tariffs, a full complement of tariff arrangements, with all of its connections, for running as a Belt Line railroad. During the time I was with the railroad, neither I nor anybody connected with the E., J. & E. railway had anything to say or any voice in the conduct of any of the business of any of the subsidiary companies, whether manufacturing or mining, not a word, any more than we would with any other industry located on our road. During that time none of the steel corporation subsidiaries, whether they were manufacturing or mining, had anything to
167 say about the management or operation of the E., J. &. E. Railway. Then some reference was made to the payment of division counsel during the time that I was president of the E., J. & E. road for quite a number of years back; the E., J. &. E. did not pay its division counsel directly. Pardon me, I didn't understand the question. For a number of years it has paid directly.

Q. That is what I asked.

I won't be sure, probably ten or fifteen years. We paid him no more than he earned (Tr. 409–411).

CROSS EXAMINATION BY MR. COLLINS

The E., J. & E. Railway purchased the coal that I have just been speaking about from the United States Fuel Company. They did not purchase it from the United States Steel Corporation. I don't know, it may have been in the beginning the coal of the Bundsen Coal Company; I am not sure whether that was it or not, but that was also a subsidiary of the United States Steel Corporation (Tr. 412). At that time I believe it was the United States Fuel Company.

As to why I wrote Mr. Farrell, president of the Steel Corporation, a letter about this increase in price: Because Mr. Farrell was president of the United States Steel Corporation and I was used to discussing a great many of our affairs with him, like I called his attention to the fact that our expense would be increased by having to pay more for coal; and I think he came back and told me that I would have to do that in a great many other instances with other people, and not to be unusually disturbed over it, just as a
168 matter of advice to him (Tr. 413). I am denying the correctness of the statements made in my letter of April 25, 1917, to Mr. Farrell, in regard to these prices and so forth. I was not informed about it and did not take the trouble to look into it and

see whether I was right or not. As to whether I also deny the statement appearing in parenthesis in the letter, which is in evidence as page 7 of Government Exhibit J, that "we make no purchases outside of any material that can be supplied by the subsidiary company": I had not taken the trouble to inform myself in here of what our purchases were down there, and as I told you, I was probably pretty mad at the increase in price down here, and did not investigate it close enough; if I had, I probably would not have written that letter. I was not familiar with the prices that we paid. As to whether I now recall this particular instance: I recall the letter. I recall my feelings at the time. I was very much disturbed over the increased cost of our fuel for our railroad. It represented a large sum. It was stated that the Steel Corporation was organized in 1901; at that time the stock of the E., J. & E. Railroad was owned, as I recall it, by the Federal Steel Company, which had been formed, I believe, in 1898 or '99. Every share of the stock was owned by the Federal Steel. The stock was owned by the general public prior to the acquisition by the Federal Steel Company (Tr. 414-416). The E., J. & E. Railroad started operating, I think, about 1884, that is, the first part of the E., J. & E. road. Different parts were constructed later but the road was practically completed; it was completed from Waukegan and around to Porter in 1891 or '92, and it was completed to Porter when I came on the road in 1893 and since that time we have built some other lines (Tr. 416).

169 REDIRECT EXAMINATION BY MR. KNAPP.

Since I was on the stand I have remembered a contract which I discussed with Judge Gary which I did not mention when I was on the stand. Concerning that: I had agreed to a final settlement with the Director General of Railroads. That settlement involved the use of our railroads during the government control. The government, under that settlement owed us something near four million dollars, and I had agreed with the Director General and he prepared a resolution for our Board of Directors to approve before I could attach my signature to the agreement. However, I had signed a memorandum agreement making the settlement before I had the meeting with our Board of Directors to get the approval and that I showed Judge Gary—not the tentative agreement, but my memorandum of the agreement with the director general, and I told him the amount of the settlement and that is all; but I did discuss that matter with him. This memorandum of agreement I made with the Director General before I had taken the matter up with Judge Gary. The final draft of the contract of settlement was prepared by the accounting officers of the railroad, and the accounting officers of the Director General, who reconciled all of the differences. The Director General prepared the final form of the contract, what the con-

tract was to be, the final adjustment of the contract (Tr. 424–425). I think I had that form with me when I talked with Judge Gary. After that we called our Board of Directors together and they authorized my affixing the signature of myself and the Secretary to the final agreement with the Director General, in final settlement.

Concerning the transfer of Mr. Fisher from E., J. & E. down
170 to New York: When the Government took over the railroads Mr. Fisher was our general auditor; the Government appointed Mr. Rogers as Federal Manager here and all the officers became federal officers except Mr. Fisher and myself and we remained as Corporate officers. There was not very much for him to do and Mr. Filbert wanted to know if he could not borrow him for a short time to do some special work for Mr. Filbert. He went down to New York and after being there for some three months I think it was, I suggested if he were going to keep Mr. Fisher he better pay him, but I wanted to retain him for myself on a nominal salary so I could have somebody to advise me, and that has been the result up to the present time (Tr. 426–427).

171 W. J. HAMMOND, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. KNAPP

I am Traffic Manager, Inland Steel Company. I have occupied that position sine 1926. The duties of the Traffic Manager of the Inland Steel Company are: General supervision over the movement of traffic of the company quoting rates to the sales organization, arranging for expediting the service and filing claims, the general duties assigned to the industrial traffic department. The Inland Steel Company produces iron and steel commodities. We have two plants, one located at Indiana Harbor, Indiana, and one at Chicago Heights, Illinois. Neither one of those plants is on the line of road of the Elgin, Joliet & Eastern Railroad Company. The E., J. & E. Railroad runs parallel with the Indiana Harbor plant and does not actually serve the plant, but at Chicago Heights the E., J. & E. serves the town of Chicago Heights, and a road known as the Chicago Heights terminal serves practically all of the industries at Chicago Heights. Shipments from our Chicago Heights plant when they move out of town, move over the different lines that serve Chicago Heights, including the E., J. & E., Michigan Central, the C. & E. I., and the Baltimore & Ohio C. T. Railroad (Tr. 427–428). Our company uses the line of the Elgin, Joliet & Eastern Railway Company. As to why we use it: There are several reasons, the location of the E., J. & E. Railroad to enable us to secure expedited services in many cases in connection with our western rail-
172 road, that is not quite as satisfactory possibly over some of the other lines; in other words, in handling over the E., J. & E. Railroad you would eliminate several terminals in many cases

in the Chicago Area. The shipment over the E., J. & E. would move directly to western connections and would give us, generally, a little better service than going over these various terminals (Tr. 429). As to how we transact business with the E., J. & E. road: In the same manner that we deal with any other railroad; there is no difference in any manner that I know of. They solicit business from us the same as the other railroads do, and we pay the same rate over the E., J. & E. Railroad and it is identically the same situation as dealing with any railroad. In doing business with the E., J. & E. road we come in contact with the Traffic Department representatives, principally Mr. Bond, the Vice President, Mr. Mangold, the Traffic Manager, and Mr. Davies, General Freight Agent, and the various representatives and solicitors that call on my office or my assistant's office. In doing business with the E., J. & E. Railway we never come in contact in any way with any official or with anybody connected with the United States Steel Corporation; nor with anyone connected with any of the subsidiaries of the United States Steel Corporation. In handling railroad matters we do not come in contact with the Illinois Steel Company, the American Bridge Company, the American Steel & Wire Company, the American Sheet & Tin Plate Company, the National Tube Company, or the Universal Atlas Cement Company, all of which are subsidiaries of the United States Steel Corporation (Tr. 429–430). Our company is a competitor of the Illinois Steel Company. We have been a competitor with other subsidiaries mentioned—the American Steel & Wire, so far as fence posts are concerned, the American Sheet & Tin Plate, so far as sheet and tin plate are concerned. In the transaction of any business that we may
173 have had with the E., J. & E., we have never discovered anything that indicated to us that we were being discriminated against in any way in comparison with the service which the E., J. & E. gave the United States Steel Corporation or any of its subsidiaries (Tr. 431). As to whether we have received good service from the E., J. & E. Railway: Yes; as far as it comes to my observation, the service has been entirely satisfactory. I think that service is the principal reason we would give traffic to the E., J. & E. Railroad. Occasionally a customer might be located on that line and request that we route the delivery that way, but primarily the service is the principal inducement for giving business to the E., J. & E. Railroad.

174 OSCAR TOWNSEND, called as a witness on behalf of the Defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. KNAPP

I am Vice President, Chicago Great Western Railroad. I have been with the Great Western Railroad 23 years approximately, as Vice President about four years. Before that I was Traffic Man-

ager for five years. I am familiar with traffic matters as handled by railroad companies in this locality. My company does business with the E., J. & E. road. It connects with the E., J. & E. road at Ingalton, Ill. We have a line from Chicago to the Twin Cities, Chicago to Omaha, Chicago to Kansas City. We interchange business at Ingalton—we deliver our business to them and they deliver to us. We have through rates over other roads, that is, over the line of our road and the E., J. & E. We have a division of rates. The matter of division of rates is handled between us and the E., J & E. road by negotiations. It is handled in no different way than such matters are handled between our road and any other railroad. In transacting the business which we transact with the E., J. & E. road we come in contact with—Well over the period of approximately 20 years Mr. Lewis, first, who used to be the Traffic Manager, Mr. Bond, and Mr. Mangold, who are connected in the Traffic Department with the E., J. & E. road.

In transacting business with the E., J. & E. road we do not come in contact with anyone connected with the United States Steel Corporation or with the Illinois Steel Company, or the American Bridge Company, or the American Steel & Wire Company, The American Sheet & Tin Plate Company, the National Tube Company, or the Universal Atlas Cement Company, or the United States Fuel Company. Our relations with the E., J. & E. have been satisfactory. They give us good service.

175 C. A. LAHEY, called as a witness on behalf of the Defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. KNAPP.

I am Vice President of the Quaker Oats Company. I have held that position since January 1, 1923. Before that time I was Traffic Manager of the company, July 15, 1920. Since I have held the last position I have jurisdiction over traffic matters (Tr. 436).

We have eight plants in the United States, eight mills that are engaged in the conversion of grain into the products of grain. Some of those plants do business over the Elgin, Joliet & Eastern from Cedar Rapids and St. Joseph, principally.

Our combined traffic into and out of those mills, that is handled over the E., J. & E. railroad, I would think, would average about 6,000 or 7,000 cars a year.

The E., J. & E. Railway Company takes our business from its connections with the railroad that serves the mills, and moves it over the E., J. & E. Railroad to their connections with the lines east of Chicago and the Chicago Gateway route. That is sometimes called a bridge service through the Chicago Gateway (Tr. 437).

In transacting our business with the E., J. & E. Railway Company I come in contact principally with Mr. Bond and Mr. Mangold and

occasionally the president acts, gets after me. Mr. Bond and Mr. Mangold come in contact with me in the interest of securing business for their company. In other words, they are soliciting business. As to why we give business to the E., J. & E. Railroad: Well, it is a natural route from the west to the east and from the east to the west that takes traffic out of the more difficult areas in Chicago, and we regard the service the E., J. & E. Railroad gives of sufficient interest to us to make use of it in the handling of our business from east to west, and west to east.

176

We never give our business on any other grounds than on the ground of good service.

In transacting the business which we transact with the E., J. & E. Railway, we never come in contact with any one connected with the United States Steel Corporation; or any one connected with the Illinois Steel Company, the American Bridge Company, the American Steel & Wire Company, the American Sheet & Tin Plate Company, the National Tube Company, or the Universal Atlas Cement Company.

The E., J. & E. Railroad company has given us good service.

No influence has ever been brought to bear upon me by an official of any of these companies I have mentioned in regard to giving any business to the E., J. & E. Railroad Company.

Mr. COLLINS. If the Court please, I have no cross examination, but I would like the record to show that this testimony comes in subject to the same objection I made.

The COURT. Let it be admitted, but you had better have your record show you make a motion to exclude the testimony at the conclusion of each witness who testifies along this line and the motion will be overruled, subject, however, to the objection.

Mr. COLLINS. All right.

Mr. KNAPP. Would it be of any service or accomplish anything if I should make a statement of my theory upon which this line of evidence is offered?

The COURT. I am going to take this testimony and you can take that up in the argument.

Mr. COLLINS. No cross examination.

177 F. H. LAW called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. KNAPP

I am Assistant to the vice president of the Illinois Central Railroad. I have held that position about three years.

I am familiar with traffic matters on the Illinois Central Railroad. I have been in the Traffic Department of the Illinois Central about 35 years.

The Illinois Central Railroad Company connects with the E., J. & E. Railroad Company at Matteson and at Munger, Illinois.

It exchanges business with the E., J. & E. Railway at both junctions. It has through rates and through routes. It has division of rates.

The matter of division of rates between our company and the E., J & E. is handled in the same way we handle the matter of division of any rail connection, any other rail connection. In the matter of rates the E., J. & E. is a member of the same committee and rate organizations that were set up, that we belong to, and the rates are negotiated in that way, sometimes local rates individually with the E., J. & E., and the divisions are negotiated between the officers of the Illinois Central System and officers of the E., J. & E. in the same way that we negotiate divisions with other connections (Tr. 440–441).

Some of the associations to which both our company and the E., J. & E. belong are the Illinois Freight Association and the Central Freight Association. No steel company belongs to those associations.

When I do business with the E., J. & E. Railway I come in contact with Mr. Bond or Mr. Davies, or Mr. Mangold, but more especially my contact has been with Messrs. Bond and Davies.

178 Those men are both in the Traffic Department of the E., J. & E. Railroad.

In transacting any business with the E., J. & E. road, I do not come in contact with anybody representing the United States Steel Corporation, or with anybody representing or in any way connected with the Illinois Steel Company, the American Bridge Company, the American Steel & Wire Company, the American Sheet & Tin Plate Company, the National Tube Company, or the Universal Atlas Cement Company (Tr. 442).

My experience in our business relations with the E., J. & E. Railway Company has been satisfactory. I believe we get fair and equal treatment from that road.

Mr. COLLINS. If the Court please, I move the exclusion of this testimony on the ground of irrelevancy.

The COURT. The motion will be overruled subject, however, to be reconsidered.

179 CHARLES ERVIN called as a witness on behalf of the Defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. KNAPP

I am Assistant Manager Railroad Traffic Division of the Texas Company.

The business of the Texas Company is petroleum and asphalt (Tr. 433).

We have quite a number of refineries scattered throughout the United States, one at Lockport, Illinois, one at Tulsa, Oklahoma, one at Port Arthur, Texas, and one at Port Natchez, Texas, Houston, Texas, San Antonio, Texas, El Paso, Texas, Craig, Colorado, and

Casper, Wyoming, Cody, Wyoming, and Sunburst, Montana, Thenard, California, and Tryse, Kentucky.

Our company routes freight over the line of the E., J. & E. Railway, principally for better service obtained in connection with the E., J. & E. routing.

In transacting business with the E., J. & E. Railway Company we come in contact with Mr. Bond, Vice President, Mr. Mangold, Traffic Manager, Mr. Davies, General Freight Agent. In transacting business with the E., J. & E. Railway Company, I never come in contact in any way with any one connected with or representing the United States Steel Corporation, or any one connected with or representing the Illinois Steel Company, the American Bridge Company, American Steel & Wire Company, the American Sheet & Tin Plate Company, the National Tube Company or the Universal Atlas Cement Company (Tr. 444).

My experience with the E., J. & E. Railway Company has been very satisfactory. I feel that I have had fair and efficient service.

Mr. COLLINS. Just a moment, please; I make the same
180 motion to exclude that.

The COURT. Motion overruled, subject, however, to be reconsidered.

181 E. M. BRINKMAN, having been first duly sworn, testified as follows on behalf of the Defendant.

DIRECT EXAMINATION BY MR. KNAPP

I am acting Traffic Manager of the Jewel Tea Company. I have been connected with the Jewel Tea Company approximately 11 years, entirely in the traffic department. The Jewel Tea Company is a manufacturer and distributor of food products. The plant of the Jewel Tea Company is now located at Barrington, Illinois. Approximately 3000 cars per year are handled in and out of that plant. The cars go into and out of that plant over the E., J. & E. Railroad. The plant has been located at Barrington since March 1, 1930. Before that time it was at Chicago, Illinois and Hoboken, New Jersey (Tr. 445–446). The matter of moving the business to Barrington had been under consideration for two or three years prior to the date that we actually moved.

The Traffic Division along with other Departments of the business, had the duty of preparing information to show just where our western plant should be located. It was our duty to determine from a traffic standpoint where it would be most economic, the most economical point for the company to locate. We recommended a location in the Chicago area preferably on the E., J. & E. Railroad. We selected the E., J. & E. railroad from a service standpoint only. We decided that the location on the E., J. & E. Railroad would give us practically the same service that we could secure in any location in the

city of Chicago, because it was an outer belt line intersecting all railroads running into Chicago (Tr. 447).

Our experience since we have had the new location at Barrington has been absolutely satisfactory. When we determined to move the plant to Barrington, there was a pamphlet prepared
182 entitled "Reason for Jewel's Move to Barrington", prepared by the man who is now our vice president. It was sent out to the stockholders, employes and general public. Roughly speaking, the original investment in our plant at Barrington was approximately $1,500,000. That part of the pamphlet which relates to the E., J. & E. road reads:

"Circling about the city of Chicago, at a distance varying between 30 and 50 miles away there runs what is called the Outer Belt Line and more properly known as the Elgin, Joliet & Eastern Railway, a freight road which is owned by the United States Steel Corporation, this railroad cuts all trunk lines entering Chicago, thus a town located at the intersection of this road and one of the trunk lines entering Chicago, would have freight service virtually equal to that enjoyed by most advantageous locations in the City of Chicago; this situation seemed to be made to order to fill the need which faced us. Therefore we confined our efforts to investigations of locations upon this railroad."

As to how many of those pamphlets were issued and circulated: I have not quite an exact idea, but we are still passing them out today, and we have calls for them ocassionally; I would say there were at least 10,000 in the first issue printed, and we have been reissuing it since (Tr. 448–449).

In transacting our business with the E., J. & E. our main contact is with the local agent at Barrington, although we occasionally find it necessary to call on Mr. Bond, Mr. Mangold, and also Mr. Davies. Mr. Mangold has called occassionally and solicited our business in our plant. In transacting our business over the E., J. & E. we never come in contact with anybody connected with the United
183 States Steel Corporation. I do not know anybody connected with the United States Steel Corporation. In transacting this business, we never come in contact with anybody connected with the Illinois Steel Company, The American Bridge Company, the American Steel & Wire Company, the American Sheet & Tin Plate Company, the National Tube Company or the Universal Atlas Cement Company. I do not know any one connected with any one of those companies.

Mr. COLLINS. I make the same motion, Your Honor, to exclude the testimony.

The COURT. Overruled, subject to being reconsidered.

184 H. H. BASCOM called as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. KNAPP

I am Assistant Traffic Manager, Youngstown Sheet & Tube Company. I have held that position twelve years. I have charge of the Traffic Department in the Chicago District.

The Youngstown Sheet & Tube Company has three plants located in the Chicago District—one at Indiana Harbor, one at South Chicago, and one at Evanston, Illinois. Those plants are engaged in manufacturing and producing steel commodities, such as billets, bars, shapes, pipe, skelp, plate, tin plate, flat plates, and pig iron. Our company is in competition with the Illinois Steel Company. We are also in competition with the National Tube Company, and on products shipped from Youngstown is in competition with the American Steel & Wire Company, also the American Sheet & Tin Plate Company (Tr. 451–452).

We do business with the E., J. & E. Railway. That company serves a portion of our Indiana Harbor plant—it serves the steel plant and the tin mill; they do not serve the coke plant. The Indiana Harbor Belt Railway serves the coke plant. We really have two companies that go into our plant. I do give business to the E., J. & E. Railroad. As to what proportion, about fifty-fifty with the E., J. & E. and the Indiana Harbor Belt. Neither one of those companies operates engines within our plant. They do perform some service in the tin mill but not in the steel plant. The work in the steel plant is performed with our own engines. We have seven engines employed there. We have approximately 35 miles of track in there, and two blast furnaces (Tr. 453).

185 In transacting our business with the E., J. & E. Railroad I come in contact with Mr. Bond, Mr. Mangold, and Mr. Davies, principally. I never come in contact with any one connected with the United States Steel Corporation, or with any of these other companies that were mentioned a few minutes ago. There is no difference in the way in which I do business with the E., J. & E. and the way in which I do business with the Indiana Harbor. I do business with each one of those companies in a manner that is usual and customary in doing business with railroad companies generally.

Mr. COLLINS. I make the same motion, your Honor.

The COURT. Overruled; subject to being reconsidered.

186 H. H. HOLCOMB, being called as a witness on behalf of the Defendant, and first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. KNAPP

I am Vice President Chicago, Burlington & Quincy Railroad. I have held that particular position about five years. Before that I

was Freight Traffic Manager for eight years. I have been in the railroad business forty-four years. I have been familiar with traffic matters during that time. The Chicago, Burlington & Quincy Railway Company does business with the E., J. & E. Railroad. It has through routes and through freight rates with the E., J. & E. road, and it has division of rates. It joins or crosses the E., J. & E. at Eola, Illinois, about three miles east of Aurora, Illinois. Our divisions between our road and the E., J. & E. are arranged as we do with any other through connections, by mutual agreement. In my opinion, in negotiating such division, the E., J. & E. has been fair and reasonable. In transacting our business with the E., J. & E. road I come in contact with the traffic officials of that road, Mr. Bond, Mr. Davies, and Mr. Mangold. In doing any of the business which I do with the E., J. & E. road, I do not come in contact at all with any officials or any one connected with the United States Steel Corporation, or any one connected with the Illinois Steel Company, the American Bridge Company, the American Steel & Wire Company, the American Sheet & Tin Plate Company, The National Tube Company, or the Universal Atlas Cement Company, or United States Fuel Company.

Mr. COLLINS. The same motion, your Honor.

The COURT. Overruled; subject to be reconsidered (Tr. 456–458).

187 J. W. ELLIOTT, called as a witness on behalf of the Defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. KNAPP

I am general traffic manager for Fairbanks Morse & Company. I have held that position eight years. Before that I was with the Union Pacific Railroad. My work when I was with the Union Pacific was in its Traffic Department. I have been in the traffic business about 31 years. Since I have been connected with Fairbanks Morse & Company, I have had business to do with the E., J. & E.—we route our freight over the E., J. & E. on account of service. As to whether there is any other reason why we route that over the E., J. & E. except that of service: We try to keep it out of the Chicago terminal by routing it over the E., J. & E. and we keep it out of the congested district. The service that the E., J. & E. has given us has been absolutely satisfactory. In transacting our business with the E., J. & E. road I never come in contact with any one connected in any way with the United States Steel Corporation, or with the Illinois Steel Company, or the American Bridge Company, or the American Steel & Wire Company, or the American Sheet & Tin Plate Company, the National Tube Company, the Universal Atlas Cement Company, or the United States Fuel Company. In doing business with the E., J. & E. road I come in contact with the Traffic Department, Mr. Bond, Mr. Mangold, Mr. Davies, and other members of their soliciting force. So far as the business which I do with the

E., J. & E. is concerned, I never have any occasion to know if there was such a thing in existence as the United States Steel Corporation.

Mr. COLLINS. The same motion, your Honor.

The COURT. Overruled; subject to be reconsidered (Tr. 459–461).

188 H. S. WELTON called as a witness on behalf of the Defendant, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. KNAPP

I am Traffic Manager, Victor Chemical Works, engaged in the manufacture of chemicals at Chicago Heights, Illinois, and Nashville, Tennessee. I have been traffic manager about fourteen years, fourteen with the Victor Chemical Works and three years with the Great Atlantic and Pacific Tea Company. I am familiar with the way in which traffic matters are handled between industries and railroads. Our company routes freight over the E., J. & E. roads because the E., J. & E. road is an Outer Belt line and has connections with all trunk lines running to and from Chicago and we have found that their service is superior in many cases to that of other lines. The E., J. & E. does not try to dictate the routing of our freight beyond its own line. We control that ourselves. In doing business with the E., J. & E. I come in contact with members of the Traffic Department, Messrs. Bond, Mangold, and Davies. I never come in contact with any one in any way connected with the United States Steel Corporation, or with any one connected with these companies which have been mentioned so may times this morning here. I believe that the E., J. & E. has given us fair and equal treatment.

Mr. COLLINS. Same motion.

The COURT. Overruled, subject to being reconsidered (Tr. 461–463).

189 R. C. DAVIDSON, called as a witness on behalf of the Defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. KNAPP

I am General Freight agent, Chicago, Rock Island & Pacific Railway Company. I have held that position since 1927. Before that in minor capacities, 30 years' experience with the Rock Island. I am familiar with the traffic departments of railroads. We have two connections with the E., J. & E., one at Joliet, Illinois, the other at Minooka, Illinois. We have through routes and through rates and division of rates, with the E., J. & E. and those matters are handled in the same way with the E., J. & E. as with other roads. I feel that the E., J. & E. deals fairly with us in making divisions of rates. In doing business with the E., J. & E. I come in contact with the traffic officials of that road. I do not come in contact with the officials of

the United States Steel Corporation or any of its subsidiaries that have been mentioned this morning.

Mr. COLLINS. The same motion.

The COURT. Motion overruled, subject to being reconsidered (Tr. 464–465).

190 WAYNE P. HENDRICKS, called as a witness on behalf of the Defendant and being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. KNAPP

I am purchasing engineer for the William A. Baehr organization which is an engineering and management corporation for public utility and railroad property. I had nothing to do with locating the plant on the E., J. & E. The Baehr organization has two plants located on the E., J. & E., at Waukegan, Illinois. I am familiar with the transaction of business between those plants and the E., J. & E., so far as the movement of freight and so forth is concerned. As to the nature of the freight that move over the E., J. & E. to and from those plants: Coming into the plant at Waukegan we have operating supplies, primarily fuel oil, gas oil, those are the bulk of the incoming. Outgoing traffic moves frequently from the coke and chemical plants and consists of by-products, coke, tar, and ammonium sulphate. I do not know why the plants were located on the line of the E., J. & E. When transacting any business between our company and the E., J. & E., I come in contact primarily with the local agent at Waukegan and men with the Traffic Department in the E., J. & E. office at Chicago. I do not come in contact with any one connected with the United States Steel Corporation or any of its subsidiaries, in connection with the railroad shipment matters.

Mr. COLLINS. The same motion.

The COURT. Overruled. Subject to being reconsidered (Tr. 465–476).

191 WILLIAM D. LINDSAY, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. KNAPP

I am Traffic Manager for the United States Gypsum Company. I have been connected with that company 30 years. I have had charge of traffic matters during those times. I am familiar with the way in which traffic matters are handled between shippers and railroads. There is no difference between the way in which I handle traffic matters over the E., J. & E. road and the way in which I handle traffic matters over any other railroad. I make shipments over the E., J. & E. Railroad because our plant is located on the E., J. & E. at East Chicago, Indiana. The E., J. & E. gives us no

advantage in the routing of our freight. It is routed over the E., J. & E. because it is the originating line of business. We can reach the Indiana Harbor Belt which has an operating arrangement over the E., J. & E. Railroad. From the E., J. & E. we can reach all of the trunk lines with which the E., J. & E. connects, both east and west. Our business, certain business has to move over the Baltimore & Ohio, Chicago terminal to any connection with the E., J. & E. and some of the northwest lines. I am familiar with the fact that the E., J. & E. extends from Waukegan to Joliet and around then to Porter and therefore crosses every trunk line entering Chicago. So over the E., J. & E. we can reach every trunk line entering Chicago. In doing business with the E., J. & E. I come in contact with the general traffic department, the traffic manager, Mr. Mangold and the General Freight Agent, Mr. Davies. They do not solicit our business. We give it to them voluntarily. We do not come in contact, in doing business over the E., J. & E., with any one connected with the United States Steel Corporation or any
192 (Tr. 468–470) of its subsidiaries.

Mr. COLLINS. The same motion.

The COURT. Overruled, subject to being reconsidered.

Stipulation as to certain testimony

Mr. KNAPP. If the Court please, Mr. Collins has suggested instead of going further in this matter, that we give to him a list of the witnesses we have ready to testify, including shippers, representatives of shippers, and representatives of railroad companies, and that he will admit that they will testify along the same general line as the witnesses who have already testified.

In other words, the shippers will testify along the same line as the shippers, and the railroad men along the same general line as the railroads and with that we will be ready to stop putting on witnesses at this time.

The COURT. Very well.

Mr. COLLINS. Of course, if the Court please, I will want the record to show also that I now make this same motion with respect to each of them to exclude their testimony.

The COURT. Yes.

* * * * * * *

Mr. KNAPP. Take the industries.

* * * * * * *

The COURT. I would suggest you give the name of the witness, his official position, the company that he represents, and the address of the witness; and so on.

(Thereupon the following names were read as suggested:)

C. C. Pardee, Traffic Manager, Minneapolis, Minn., Commander Larrabee Elevator Company.

Arthur B. Ayers, Traffic Manager, Minneapolis, Cream of Wheat Company.

O. I. Romfo, Traffic Manager, Minneapolis, Atkinson Milling Company.

H. W. Hazeltine, Traffic Manager, Minneapolis, Russell Milling Company.

E. J. W. Schellenberger, Traffic Manager, Minneapolis (Tr.
193 471–472), King Midas Milling Company.

E. Bleisath, Traffic Manager, Minneapolis, Minn., H. H. King Company.

D. A. Small, Traffic Manager, Minneapolis, Archer Daniels Milling Company.

J. G. Mann, Traffic Manager, Northup King Company, Minneapolis.

Otto Mortenson, Traffic Manager, Minneapolis, Cargill Elevator Company.

William Byron, Traffic Manager, Milwaukee, Wis., Allis-Chalmers Company.

G. E. Wright, Traffic Manager, Milwaukee, Sterling Motor Truck Company.

Thomas Walsh, Traffic Manager, Milwaukee, Bucyrus Erie Company.

W. H. Bowersoch, Traffic Manager, Milwaukee, Milwaukee Vinegar Company.

Max Lehfeldt, Traffic Manager, Milwaukee, Milwaukee Western Malting Company.

E. A. Reuber, Traffic Manager, Milwaukee, Wilter Manufacturing Company.

Jerry Hanak, Traffic Manager, Kenosha, Wis., Simmons Bed Company.

Ed Dailey, Managing Partner, Joliet, Ill., Alexander Dailey & Company.

Peck, Joliet, Ill., Knapp Bros. Manufacturing Company.

C. R. Anson, Superintendent, Joliet, General Refractories Company.

Jones, President, Joliet, Farrell Company and Receiver of James T. Haggie & Sons Company (Tr. 473–474).

194 R. D. Baldwin, Joliet, Star Peerless Wall Paper Company.

D. E. Bourrie, Joliet, F. C. Schindler Company.

L. Calkins, Superintendent, Joliet, Rubberoid Company.

R. H. McElroy, Vice President, Chicago & Whiting Standard Oil Company.

J. P. Bauer, Traffic Manager, Chicago, Ford Roofing Products Company.

C. D. Dooley, Director of Traffic, Chicago, Colgate Palm Olive Peet Company.

W. W. Manker, Traffic Manager, Chicago, Armour & Company.

H. J. Legan, General Traffic Manager, Chicago, Morton Salt Company.

J. W. Bingham, Traffic Manager, Chicago, Corn Products Refining Company (Tr. 474).

Ralph H. Drake, Division Freight Agent, Chicago, American Can Company.

G. A. Blair, Gen. Traffic Manager, Chicago, Wilson & Company (Also Chairman of Executive Committee National Industrial Traffic League).

B. J. Burchett, Traffic Manager, Chicago, Deep Rock Oil Company.

J. T. Roth, Asst. Traffic Manager, Chicago, U. S. Cast Iron Pipe Company.

T. J. McLaughlin, Director of Traffic, Chicago, American Radiator Company.

F. J. Danner, Gen. Traffic Manager, Chicago (Tr. 475), Chase Bag Company.

195 R. W. Webster, Traffic Manager, Chicago, Sahara Coal Company.

H. H. Stephens, Traffic Manager, Chicago, Calumet Baking Powder Company.

Andrew Heckler, Traffic Manager, Chicago, Greiss Pfleger Tanning Company, Waukegan.

Ed Sherwin, Vice President, Chicago, Chicago Hardward Foundry Company, Waukegan.

John Hussey, President, Waukegan, M. H. Hussey Corporation.

Walter Booth, Superintendent, Waukegan, Blatchford Calf Meal Company (Tr. 475).

Gubernator, Traffic Manager, Allentown, Pa., Lehigh Portland Cement Company.

Shackell, Traffic Manager, Cedar Rapids, Ia., Penick & Ford Company.

Scott Wallace, Gen. Traffic Manager, New York, Johns Manville Company (Also plant at Waukegan).

Parr, Traffic Manager, Kenosha, Wis., Nash Motors Company.

Mr. MILLER. That is a list of the shippers, and the remaining are the railroad officials:

E. P. Vernia, Vice President, Monon Railroad, Chicago.

H. W. Beyers, Vice President, Chicago Northwestern R. R., Chicago.

E. B. Finnegan, Gen. Traffic Manager, Chicago, Milwaukee, St. Paul & Pac. R. R., Chicago.

Mr. COLLINS. I want to be certain that the record shows that I have made a motion with respect to all of this testimony that we agreed these witnesses would give—to exclude their testimony on the ground I stated as to relevancy.

The COURT. I will overrule the motion, however, subject to the reconsidered at the argument (Tr. 476).

196 S. M. ROGERS, having been previously sworn, further testified as follows:

DIRECT EXAMINATION BY MR. KNAPP

Reference has been made during the trial here of meetings of the presidents of the subsidiary companies of the United States Steel Corporation occasionally in New York City. I do attend those meetings.

During the time Mr. Banks was president, I occasionally attended them, and I have attended a few since I became president.

As to the character of the discussion that took place at those meetings:

So far as the E., J. & E. was concerned, they asked me how business conditions were and what the outlook was for business, and what the—what our business connections were doing—our railroad connections and business generally on the road.

There was never anything in the nature of directions given to me at those meetings as to how the E., J. & E. road should be managed or operated.

No one at that meeting told me as the representative of the E., J. & E. to do anything relating to the management or operation of the road.

At one of those meetings I read a memorandum which I had prepared beforehand.

It is the memorandum that is a part of Government Exhibit A, page 6.

197 This memorandum does not indicate fairly the general character of all discussions from all the companies that were at those meetings.

That report that you have there probably you might say is the most elaborate report; in other words, it went into more detail than any report I think I ever made at any of the president's meetings at which I attended. It reads:

"MEMORANDUM

"During the year 1928 our gross revenue was $24,602,000. We handled 897,641 revenue cars exclusive of cars switched in intra-mill service, or for connecting lines at junction points.

"We handled 603,023 cars in intra-mill service. Our total revenue tonnage handled in road trains in 1928 was 36,194,000 tons. Our average earnings exclusive of switch and intra-mill business were 63.4¢ per ton—operating ratio was 68.3 per cent.

"The business for the first six months of this year has been good and exceeds last year's tonnage and revenue notwithstanding the fact that there is a large amount of coal coming in by water to the Steel Plants in Gary and South Chicago Districts, that previously moved via rail and which afforded us very desirable revenue.

"The various industries on the line of the E., J. & E. Railroad, are all doing well and showing an increase of business to use over last year, and the feeling among our patrons is that the balance of the year will be very satisfactory to them. The Standard Oil Company at Whiting, which last year gave us some 60,000 carloads of business will probably give to us this year between 70,000 and 75,000 carloads of freight (Tr. 479–481).

198 "The new industries located on the Elgin, Joliet, and Eastern Railroad during the last two years are constantly increasing their traffic. I refer particularly to the State Line Generating Company and the North Shore Chemical Company, whose coke and coal business is very desirable. The U. S. Gypsum Company is just completing a plant at East Chicago which will be served by us and the Indiana Harbor Belt Railroad. We estimate we will receive from them from 20 to 25 cars per day outbound business. The Jewel Tea Company is just starting a plant on our line at Barrington and they estimate their business in and out of this plant will be approximately 30 cars per day.

"Our property is well maintained and our equipment kept in good condition. We have no particularly heavy work in mind that has not been authorized. Of course, the Steel Mills are constantly calling on us for new tracks, but the forecast of this work is something that we can not make at the beginning of the year.

"The first six months of this year our operating ration was 63.37 per cent, being a reduction of 3.51 per cent under 1928."

The Elgin, Joliet & Eastern Railway Company does not manufacture anything.

No one connected with the United States Steel Corporation or any one of the subsidiaries of the United States Steel Corporation does anything or takes any part in the operation of the E., J. & E. road. Since I have been president, and I believe my predecessor before me, considered that we were in charge of the E., J. & E. and the handling of its business and its affairs.

199 The railroad company itself does not mine any coal or any other materials.

It does not produce any articles of any kind which it transports.

It has no other business except transportation.

It has no voice in the management or control of any other business except transportation.

None of the officials nor any one connected with these other subsidiaries has any voice in the management of the road.

I consider as the president of the road, I am running the railroad.

Reference has been made to the contracts made by the company and the charge in the bill is that all important contracts are directed or supervised or made by the United States Steel Corporation, that is not true.

I have looked over the list of contracts presented here introduced in evidence, the contracts that were submitted to the directors of the E., J. & E. road at the annual meetings.

There were I believe in the total some 2,313 in the list.

The United States Steel Corporation or any of its subsidiaries drew none of those contracts, not to my knowledge.

The did not specify what should go in the contracts.

Some of them cover subjects that may have been discussed with the United States Steel Corporation.

Some of them might have been discussed, of course I cannot speak for my predecessor, what he might have discussed.

I don't think I discussed any of them with the Steel Corporation.

200 As to what subjects the contracts cover:

They cover the building of sidings, the grading for tracks, the construction of shops, construction of coaling stations, round house construction, construction of office buildings, construction of water mains, contract for electric power and telephone lines; contracts for trackage with other railroads; contracts covering the separation of grades, both highway and railroad, and numerous others.

I don't think—I am satisfied, that none of those contracts that I mentioned were submitted to the United States Steel Corporation or any of its officers. Some of those contracts run into considerable amounts of money. To mention some of the more important ones: It is my recollection that our shops at Joliet run into—well, I would say between $650,000 and $700,000; we had changes in grades that ran several hundred thousand dollars; and we had separation of grades that ran into from forty to probably $100,000 and coaling stations that ran thirty to forty thousand dollars. As to whether the projects I have mentioned when I was vice president, came under my immediate jurisdiction: I think that every case that I have mentioned, the contract was negotiated by myself and approved or O. K.'d by me before it was signed by the President.

CROSS EXAMINATION BY MR. COLLINS

I stated that I had recently looked over this list of contracts and refreshed my recollection. I can not state how many of those contracts were made since I became president. I could not say

201 the number. I suppose probably I made a couple of hundred of them since I became president. A couple of hundred, out of the 2,313. That is just an estimate on my part. I stated that most of the contracts set up in this list passed through my hands one way or another as vice president, or as president. Mr. Banks might have had discussions of which I had no knowledge, that is possible. As to whether I have ever had discussions with officials of the steel corporation concerning a project involving in any particular one of these contracts: I think possibly there was one that I discussed one time in Mr. Banks' absence, the one in connection with the separation of grades at Joliet, Illinois. I stated that I attended meetings of presidents of the subsidiary companies of the Steel Corpora-

tion in New York, occasionally, both when I was vice president of the E., J. & E. and since I became president. By "occasionally" I mean: During the time of Mr. Banks' presidency, if he was absent, or unable to go, I might go down and attend the meeting. As at whose suggestion or direction or invitation I might go, I might get a letter from Mr. Farrell, president of the Steel Corporation advising that a meeting of the presidents had been called for such and such date, and asking Mr. Banks to attend, and he might have written him at that particular time he would be away and if he wanted me to come down, I would be glad to go.

Q. Such, for instance, is a letter which accompanies the memorandum that your attorney questioned you about, being page 6 of Government Exhibit A; the letter that I refer to is on page 5 of that exhibit, and your Honor, I will read that:

"Please have Mr. S. M. Rogers come prepared to make reports on the operations of your company at our next president's
202 meeting which is to be held on (Tr. 487–490) July 25th."

"This report need not be in too much detail, but it should be a comprehensive review of your activities."

I may also refer to page 7, of Government Exhibit A, a letter signed by Mr. Farrell to S. M. Rogers, President E., J. & E.:

"Kindly arrange to attend conference of Corporation officials, ten thirty A. M. Thursday, May 21st advise."

Q. It appears to be a telegram, instead of a letter. Will you state what it is, if you know, what is meant by the term "Corporation officials" as mentioned in this telegram?

A. I don't know what he means by "Corporation" officials, but usually I would say Corporation officials was officials of the United States Steel Corporation.

Q. I call your attention to a further message dated May 4, on page 7, of Government Exhibit A:

May 4, 1931, to Mr. Farrell, responsive to the one that I have read, signed by the president:

"In accordance with request contained in your letter May 1st I will arrange to attend conference of Corporation officials in New York, Thursday, May 21st."

You were president of the E., J. & E. at that time?

A. What was the date?

Q. May 4, 1931.

A. Yes, sir.

Q. And you dispatched that; you caused that message to be sent?

A. Yes.

Q. Who were present at that meeting? (Tr. 490–491.)

203 A. That is pretty hard to say exactly, as I remember the presidents of the Steel Corporation, possibly the comptroller, the vice president of the steel corporation, and presidents of probably most if not all of the subsidiary companies.

Q. I call your attention to a message on page 8, Government Exhibit A, addressed June 1, 1931, to Mr. S. M. Rogers, signed by Mr. Farrell, sayings:

"There will be a meeting of Corporation officials in this office Thursday, June 11, 11:00 A. M. Kindly advise if you will be present."

Did you attend that meeting?

A. I don't remember; I attended some meetings; I might have attended that meeting.

Q. What is your answer to the question?

A. I don't know; I don't remember that particular meeting of June 11th; I might have been there and probably was, but I couldn't say definitely.

Q. On June 1st, page 9, Government Exhibit A:

"I will arrange to attend meeting of Corporation officials in your office on Thursday, June 11th, as requested in your letter of May 28th.

"Signed, President."

That message was signed by you, as president of the E., J. & E. at that time?

A. Yes, sir.

Q. Of the 2,313 contracts set up in this list to which your counsel referred, contracts entered into by the E., J. & E. Railway Company, will you state whether or not those expenditures called for by those contracts were covered in each instance by requests made by the E., J. & E. upon the Steel Corporation for an appropriation to carry out the work involved in the contract already put through?

(Tr. 491–493.)

204 A. Where it is a charge to capital expense and it exceeded the amount, why, they asked for appropriations; an appropriation was asked for, our appropriation was made, rather.

REDIRECT EXAMINATION BY MR. KNAPP

Appropriations in those matters were not always asked for before the work was done. As to whether the work was sometimes done before the appropriation was obtained: The work may not have been done but there were cases where we would have a contract executed and the work started before the appropriation. The E., J. & E. Road offices are on the 17th floor of the office building at 208 South La Salle Street. That has been so ever since the building was built; I think they have been there for 20 years. The offices of the president, vice president, secretary and treasurer of the Illinois Steel Company are on the 16th floor. Other subsidiaries have offices in the building. Some of their offices are located on the 15th and some on the 14th, I think the 12th—several floors there; I don't remember. They are in the same building, yes (Tr. 493–494).

205 *Offers in evidence*

Mr. Knapp then offered in evidence on behalf of the defendant the following documents, which documents were admitted in evidence subject to objection by Government counsel as to relevancy.

It was thereupon stipulated and agreed by counsel for the Government and for defendant that the said documents or any copies thereof issued by the Government of the United States might be referred to and quoted from, in this proceeding or in any appellate proceeding by the parties to this proceeding and by the court before which this proceeding is tried, and by the court to which this proceeding may be appealed as though such documents were incorporated in the record and in the transcript of the record in this proceeding without being incorporated at length in said record or in said transcript thereof.

Said documents so admitted in evidence were as follows:

Defendant's Exhibit 27 A (being the 19th Annual Report of the Interstate Commerce Commission rendered for the year 1905).

Defendant's Exhibit 28 A (being all parts of the Congressional record relating to the enactment of the Commodities Clause and to Section 15 (13) of the Interstate Commerce Act).

Defendant's Exhibit 29 A (being the 24th Annual Report of the Interstate Commerce Commission rendered for the year 1910).

Defendant's Exhibit 30 A (being those parts of the report of the Attorney General of the United States for the years 1914, 1915, 1916, 1917, and 1927 which relate to and mention the Commodities Clause).

Defendant's Exhibit 31 (being Interstate Commerce Commission Report, 36 I. C. C. 557, entitled "In the Matter of Alleged Rebates to the United States Steel Corporation").

Defendant's Exhibit 32 (being House Bill 20470, 63d Congress, 3d Session).

Defendant's Exhibit 33 (being House Bill 26983, 61st Congress, 2d Session, introduced June 18, 1910).

206 DONALD L. STUMPF, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. KNAPP

The document I have in my hand is a partial list of terminal railroads, through stock ownership or otherwise affiliated with industrial or mining corporations, which is the principal shipper over its line, as valued by the Interstate Commerce Commission in its valuation hearings. The data that document contains I took from the Interstate Commerce Reports. Mr. Collins admitted that the document is a correct statement taken from those reports (Tr. 507). (Whereupon the last mentioned document was accordingly marked Defendant's Exhibit 34 and admitted in evidence, subject to objection as to relevancy) (Tr. 508).

Mr. Knapp then offered in evidence a questionnaire put out under date of November 4, 1933 by Mr. Eastman, Coordinator of Railroads and a member of the Interstate Commerce Commission, and called the Court's attention to the fact that this questionnaire was sent out broadcast over the country and contained this:

"Should the present commodities clause Section 1, paragraph 8, in the Interstate Commerce Act be modified to prohibit by specific enactment the ownership of railroads by industries?

"Should either the present or broader commodities clause suggested in the one above be made applicable to water carriers?"

(Whereupon the last mentioned document was accordingly marked Defendant's Exhibit 35 and admitted in evidence, subject to objection as to relevancy) (Tr. 509).

Mr. Knapp then offered in evidence the Annual Reports of the E., J. & E. Railway Company for the years ending December
207 31, 1926, 1927, 1928, 1929, and 1930, which reports show the financial statement of the road and show an elaborate statement of all the different kinds of business it transacts and give a statement of the number of locomotives and engines and the cars which it operates like an ordinary railroad; like an ordinary report made by a railroad company to its stockholders and gives full exposition of the character of the company and the character of its business. (Whereupon the last mentioned documents were admitted in evidence as "Defendant's Exhibits 36, 37, 38, 39, and 40", respectively) (Tr. 509–510).

Mr. Knapp then offered in evidence the Annual Report of the Elgin, Joliet & Eastern Railway to the Interstate Commerce Commission for the year ending December 31, 1930; which was offered for the purpose of showing the very elaborate and complete designation of all kinds of evidence, facts in regard to the railroad company demanded by the Interstate Commerce Commission and furnished. (Whereupon the last mentioned document was accordingly marked "Defendant's Exhibit 41" and admitted in evidence, subject to objection as to relevancy) (Tr. 514). Mr. Collins admitted that the above mentioned document is typical of reports that are made annually and regularly by defendant to the Commission.

Whereupon the defendant rested its case.

208 GRANT E. CHESSMAN, having been previously sworn, resumed the witness stand and further testified on behalf of the Plaintiff as follows:

CROSS EXAMINATION BY MR. COLLINS

Defendant's Exhibit 27 shows the amount expended in maintenance and operation for the years 1926 to '30, inclusive, by this defendant, and certain other amounts expended by it. I have seen this statement. In the first part of the statement marked "Govern-

ment Exhibit V", there is shown a break down of the first line of Exhibit 27. For illustration, for the year 1926 we show the amount of expenditures and operations, $17,275,369.37. That is a break down between the maintenance of way, structures, maintenance of equipment, traffic superintendence, personnel, and transportation for investment credit, and so forth, all of which items have been banded together and included in one figure on the top line of Defendant's Exhibit 27. (Whereupon the last mentioned document, marked "Government Exhibit V", was admitted in evidence, subject to objection as to relevancy) (Tr. 515–516). I have checked all of those figures as to their accuracy. They were made by Government representatives in my office on Saturday, and I had a chance to check them and know that they are correct. There are two other lines on this exhibit that I may explain. The next line shows the amount of capital expenditure, showed that the same way that they do on Exhibit 27; then on the last line is the Compensation to Employees which average about $12,000,000. I do not know on just what relation you can deduct the Compensation to Employees in relation to Exhibit 27. The figures are accurate (Tr. 517). The state-
209 ment marked "Government Exhibit W" for identification shows month by month for the years 1926 and '30, inclusive, the payments by the Elgin, Joliet & Eastern Railway to the United States Fuel Company for coal purchased for use of its locomotives. (Whereupon the last mentioned document, marked "Government Exhibit W", was admitted in evidence) (Tr. 518).

REDIRECT EXAMINATION BY MR. KNAPP

There is one heading on this breakdown that relates to wages. Reports of those wages are included in capital expenditures. There is no way of taking out of capital expenditures the amount of wages that were involved in capital expenditures, except by a detailed study of a month or two, and I would estimate that it would take that: those capital expenditures, the amount expended for wages, would also be included in the amount shown by the United States Steel Corporation shown on the last page or line of that statement. In the amount expended for maintenance and operation there are several large amounts, for repairs of cars, track laying, surfacing, application of new rail, all consisting of large amounts. Also coal purchased, fuel for locomotives is a considerable amount, as I have testified (Tr. 519). These matters I have just referred to are included in the amount expended for maintenance and operation. None of those matters were included in the appropriation submitted to the United States Steel Corporation—Not submitted for approval.

Mr. Collins then offered in evidence a lease of the Chicago, Lake Shore & Eastern to the Elgin, Joliet & Eastern Railway, concerning which much of the testimony has related, and three supplements or amendments; the first document being dated June 1, 1909, the supple-

ment being dated June 1, 1909, being the second separate document; the third phase of the same lease being dated December 1, 1913, and the fourth being dated December 21, 1917. (Whereupon,
210 the documents were accordingly marked "Government Exhibits X, X–1, X–2, X–3", and admitted in evidence, subject to objection as to relevancy) (Tr. 520–521).

Mr. Collins then offered the trackage agreements between the Chicago & Eastern Illinois Railroad Company and the Chicago, Lake Shore & Eastern Railway Company, the latter road having been leased as shown by the document introduced last, and this defendant now having taken over this trackage agreement. Whereupon, the document was accordingly marked "Government Exhibit Y", and admitted in evidence, subject to objection as to relevancy (Tr. 522).

(Which was all the evidence offered on the hearing of the above-entitled cause.)

211 *Government's Exhibit A*

[File endorsement omitted.]

IN RE: MEETINGS OF PRESIDENTS

[Copy of copy—President's File 629]

[Telegram]

UNITED STATES STEEL CORPORATION,
New York, July 2, 1929.

193–99–JO.

E. J. BUFFINGTON, A. F. BANKS, B. F. AFFLECK, P. MITCHELL, W. A. MCGONAGLE, H. JOHNSON, S. B. SHELDON.

There will be a meeting of the Presidents this office, Thursday, July 25, 11 A. M. Kindly advise if you will be present.

J. A. FARRELL.

1:25 p.

[Copy of copy—President's File 629]

JULY 2ND, 1929.

Mr. J. A. FARRELL,
President, United States Steel Corporation,
71 Broadway, New York, New York.

DEAR SIR: Replying to your telegram of today calling meeting of Presidents in your office, Thursday, July 25th.

Mrs. Banks and I had planned to spend about ten days or two weeks in Canada, le'ving here about 18th or 20th of July. If it is necessary for me to attend the meeting will forego the trip, or if you

desire Mr. Rogers, our Vice President, can be in attendance at the meeting.

Will you kindly advise, and oblige.

Yours truly,

President.

[Copy of original—President's File 629]

[Telegram]

UNITED STATES STEEL CORPORATION.
New York, July 3, 1929.

286 JO.

A. F. BANKS.

Y. L. July 2nd. Nothing special requiring your presence at meeting July 25th. However recommend your sending Mr. Rogers in order that your company be represented.

J. A. FARRELL.

11:25 a. m.

[Copy of copy—President's File 629]

JULY 5TH, 1929.

AFB—M

Mr. J. FARRELL,
President, United States Steel Corporation,
71 Broadway, New York, New York.

DEAR SIR: Referring to your telegram of the 3rd instant.

Mr. S. M. Rogers, our Vice President, will be in attendance at the meeting of the Presidents in your office on July 25th.

Yours truly,

President.

Mr. Rogers: please note and arrange to attend.

[Copy of original—President's File 629]

UNITED STATES STEEL CORPORATION,
71 Broadway, New York, July 11th, 1929.

Mr. A. F. BANKS,
President, Elgin, Joliet and Eastern Railway Company,
208 South La Salle Street, Chicago, Ill.

DEAR SIR: Please have Mr. S. M. Rogers come prepared to make a report on the operations of your company at our next Presidents Meeting, which is to be held on July 25th.

This report need not be in too much detail but it should be a comprehensive review of your activities.

Yours very truly,

(Signed) J. A. FARRELL,
President.

[Copy of original—President's File 629]

MEMORANDUM

During the year 1928 our gross revenue was $24,602,000.00. We handled 897,641 revenue cars exclusive of cars switched in intra-mill service, or for connecting lines at junction points.

We handled 603,023 cars in intra-mill service. Our total revenue tonnage handled in road trains in 1928 was 36,194,000 tons. Our average earnings exclusive of switch and intra-mill business were 63.4¢ per ton—operating ratio was 68.3 percent.

The business for the first six months of this year has been good and exceeds last year's tonnage and revenue notwithstanding the fact that there is a large amount of coal coming in by water to the Steel Plants in Gary and South Chicago Districts, that previously moved via rail and which afforded us very desirable revenue.

The various industries on the line of the E., J. & E. Railroad, are all doing well and showing an increase of business to us over last year, and the feeling among our patrons is that the balance of the year will be very satisfactory to them. The Standard Oil Company at Whiting, which last year gave us some 60,000 carloads of business will probably give to us this year between 70,000 and 75,000 carloads of freight.

The new industries located on the Elgin, Joliet and Eastern Railroad during the last two years are constantly increasing their traffic; I refer particularly to the State Line Generating Company and the North Shore Chemical Company, whose coke and coal business is very desirable. The U. S. Gypsum Company is just completing a plant at East Chicago which will be served by us and the Indiana Harbor Belt Railroad. We estimate we will receive from them from 20 to 25 cars per day outbound business. The Jewel Tea Company is just starting a plant on our line at Barrington and they estimate their business in and out of this plant will be approximately 30 cars per day.

Our property is well maintained and our equipment kept in good condition. We have no particularly heavy work in mind that has not been authorized. Of course, the Steel Mills are constantly calling on us for new tracks, but the forecast of this work is something that we can not make at the beginning of the year.

The first six months of this year our operating ration was 63.37 percent, being a reduction of 3.51 percent under 1928.

[Copy of copy—President's File 1087]

UNITED STATES STEEL CORPORATION,
OFFICE OF THE PRESIDENT,
New York, May 1, 1931.

DEAR SIR: Kindly arrange to attend conference of Corporation Officials 10:30 A. M. Thursday, May 21st—advise.

(Signed) J. A. FARRELL.

Mr. S. M. ROGERS,
President, Elgin, Joliet & Eastern Ry. Co.,
Chicago, Ill.

[Copy of copy—President's File 1087]

MAY 4TH, 1931.

SMR—C

Mr. J. A. FARRELL,
President, United States Steel Corporation,
New York, N. Y.

DEAR SIR: In accordance with request contained in your letter of May 1st, I will arrange to attend conference of Corporation Officials in New York, Thursday, May 21st.

Yours truly,

President.

[Copy of original—President's File 1087]

UNITED STATES STEEL CORPORATION,
OFFICE OF THE PRESIDENT,
New York, June 1, 1931.

Mr. S. M. ROGERS:

There will be a meeting of Corporation Officials in this office on Thursday, June 11th—11 A. M. Kindly advise that you will be present.

(Signed) J. A. FARRELL [Stamp].

Mr. S. M. ROGERS:
President, Elgin Joliet & Eastern Ry Co.,
Chicago, Ill.

[Copy of copy—President's File 1087]

JUNE 1ST, 1931.

SMR—G.
Mr. JAS. FARRELL,
President, United States Steel Corporation,
71 Broadway, New York, N. Y.

DEAR SIR: I will arrange to attend meeting of Corporation Officials in your office on Thursday, June 11th, as requested in your letter of May 28th.

Yours truly,

President.

[Copy of original—President's File 1087]

UNITED STATES STEEL CORPORATION,
OFFICE OF THE PRESIDENT,
New York, October 5, 1931.

Mr. S. M. ROGERS,
President.

Kindly arrange to attend conference of Corporation Officials in this office on Thursday, October 22nd—10:30 A. M. Advise.

(Signed) J. A. FARRELL.

Mr. S. M. ROGERS,
President, Elgin, Joliet & Eastern Ry. Co.,
Chicago, Ill.

[Copy of copy—President's File 1087]

OCTOBER 8TH, 1931.

SMR—G.
Mr. J. A. FARRELL,
President, United States Steel Corporation,
71 Broadway, New York, N. Y.

DEAR SIR: This will acknowledge receipt of your letter of the 5th advising of conference of Corporation Officials on Thursday, October 22nd.

I will arrange to attend.

Yours very truly,

President.

212 *Government's Exhibit B*

[File endorsement omitted.]

IN RE: LEASE OF C., L. S. & E. RY. CO.

(President's File 1303)

JULY 20TH, 1905.

Judge E. H. GARY,
Chairman, Board of Directors,
U. S. Steel Corporation, New York.

DEAR SIR: I enclose you clipping from the Chicago Tribune of the 19th inst. No notice has been served upon the C., L. S. & E. R. R. up to the present time. As to whether this is simply a sensational newspaper article, I have no means of knowing, but I do feel that our position would be very much stronger if the E., J. & E. would acquire the C., L. S. & E. R. R., either by purchase or lease. Because of the fact that the E., J. & E. business today is that of a Common Carrier and seventy-five per cent of its tonnage and revenue is derived from shipments other than [illegible] of the United States Steel Corporation or its constituent companies, were it the owner or lessee of the C., L. S. & E. R. R., the Interstate Commerce Commission could not take the position that the E., J. & E. Road served only the Illinois Steel Company, and was, therefore, only a terminal road organized for the purpose of securing larger divisions, which is another name for rebates. Besides, the earnings of the C., L. S. & E. Ry. Co., when spread over the total mileage of the two roads, would not show up so abnormally large.

I believe that it would be the best thing for the Corporation to have the E., J. & E. Road assume control, either by purchase or lease, of the C., L. S. & E. Road, and operate the C., L. S. & E. Road as a part of the E., J. & E. Road.

As to the earnings of the C., L. S. & E. Road: Any interest that the Illinois Steel Company has in the C., L. S. & E. is simply a question of book-keeping, and Mr. Filbert can devise ways and means of over-coming any difficulty in that direction. Any profits made one way or the other for the Corporation as a whole, and how it should be distributed, is a matter that can be determined upon by the Corporation; so long as we keep our profits at home, the Corporation is not the loser.

I know that in the past you have been opposed to the consolidation of the E., J. & E. and the C., L. S. & E. Roads, but did not know but what possibly you might have changed your mind in this matter, in view of the events of the last year.

Yours truly,

(Sgd.) A. F. BANKS,
President.

(President's File No. 1303)

ELGIN, JOLIET AND EASTERN RY. CO.
October 18th, 1905.

Mr. E. H. GARY,
Chairman, Board of Directors,
U. S. Steel Corporation, New York.

DEAR SIR: On July 20th I sent you "clipping" from the Chicago Tribune, and wrote you in reference to the Elgin, Joliet and Eastern leasing the Chicago, Lake Shore & Eastern Road, to which I have received no reply.

I do not want to appear persistent, but I do feel that the C., L. S. & E. Ry. will again be attacked by the Interstate Commerce Commission on the ground of its being a purely Terminal or Switching Road, and I believe it to be to the best interests of the Corporation if a lease of the C., L. S. & E. Road was made to the E., J. & E. Road. The terms of the lease could be made to the E., J. & E. Road. The terms of the lease could be made mutually satisfactory and without prejudice to the Illinois Steel Company.

The earnings of the C., L. S. & E. Road for twelve months ending June 30th, 1905, was $4,323,692.69; the earnings of the E. J. & E. Road for the same period was $2,230,114.87, a combined gross earnings of $6,553,807.56.

The mileage of the E., J. & E. Road, including main line only, not considering our double tracks or side tracks, is 235.06 miles; the mileage of the C., L. S. & E. main line, not including any yards or second track, but including leased tracks, or tracks over which the C., L. S. & E. have trackage rights, is 198.95 miles, making the combined mileage of both Roads 434.01 miles, giving an average earnings, per mile, to the E., J. & E. and C., L. S. & E. Rys. combined, of $15,100.00 per mile.

The Lehigh Valley R. R., for the year ending June 30th, 1905, earned $22,438.00 per mile. The Hocking Valley R. R. for the same period earned $17,000.00 per mile. The Erie R. R. for the same period, $20,140.00 per mile. P., F. W. & C. for the year 1903, $40,667.00 per mile. Norfolk & Western for same period, $12,352.00 per mile. The B. & O. for the same period, $15,505.00 per mile. The L. S. & M. S. for same period, $24,306.00 per mile. The Panhandle for same period, $21,177.00 per mile. The last five above mentioned Roads earnings were for the year ending June 30th, 1903. Their earnings for years ending 1905 was undoubtedly much larger per mile of Road, so if we take the combined earnings of the C., L. S. & E. and the E., J. & E. Railways, and the combined mileage of both Roads owned and operated, it would make the earnings of the E., J. & E. Road less per mile than any of the above named Roads. Taking the total combined tonnage handled by the E., J. & E. and

the C., L. S. & E., it would give an average of 42.25 cents per ton, an exceedingly low rate per ton for the average distance hauled by the Roads jointly.

By leasing the C., L. S. & E. Ry. to the E., J. & E. Road, it would, in my mind, stop all further talk or action against the C., L. S. & E. Ry. for being a strictly industrial railroad, as the E., J. & E. Ry. today derives seventy-five per cent of its earnings from business other than that of the constituent companies of the Corporation, and over half of the 25% of the business which the E., J. & E. handles for constituent companies of the United States Steel Corporation, is business that the E., J. & E. Railroad enjoyed before the formation of the United States Steel Corporation or the formation of the Federal Steel Company. I refer to traffic moved from the Illinois Steel Company at Joliet to the Washburn-Moen Plant at Waukegan, which traffic was secured by the E., J. & E. Road when the Washburn-Moen Plant was located at Waukegan, by the E., J. & E. making a long time contract with Washburn-Moen Co to handle their material between Joliet and Waukegan at a very low rate per ton.

All of the Eastern Roads are making a very determined fight to eliminate divisions with so-called industrial roads and terminal roads, giving them in lieu of divisions, a nominal switching charge. If the E., J. & E. Ry. was operating the C., L. S. & E. Ry. under lease, it would then be part of the E., J. & E. Road, and we could, with propriety, maintain our position of refusing to accept switching rates in lieu of divisions, even on our short hauls, for the reason that we are willing to accept the same earnings for longer hauls that we do for the shorter hauls. I mean by this, that we treat all of our Eastern connections alike, accepting the same divisions from all of them, regardless of the distance that we haul the freight, thus placing all of our connections on an equality, showing no preference.

As to the net earnings of the E., J. & E. Road, and as to the basis on which a lease of the C., L. S. & E. Ry. to the E., J. & E. should be made, the U. S. Steel Corporation being owners of both properties, this matter could easily be arranged, and I believe if the lease was made we can materially reduce the operating costs of the Illinois Steel Company by reducing the rates between Buffington and South Chicago, rates that we now hold at a rather high figure in order to maintain our divisions that we exact from our connections, a matter that you are thoroughly familiar with, as it was talked over very fully between you, Mr. Knapp and myself when the subject of coke divisions was under consideration.

I would be very glad, indeed, to have you consider the suggestions I have made, and advise me if you do not now think it advisable to arrange to bring the two Roads together.

Yours truly,

(Sgd.) A. F. BANKS,
President.

(President's File No. 1303)

UNITED STATES STEEL CORPORATION.
October 20th, 1905.

Mr. A. F. BANKS,
President, E., J. & E. Ry. Co.,
The Rookery, Chicago, Ill.

MY DEAR MR. BANKS: I have read with interest your letter of the 18th inst.

As you know, my general opinion has been against the proposed leasing of one railroad to the other. My opinion has been based on legal grounds, and on grounds of policy, and also justice between the different interests. If you can get Mr. Knapp's opinion that from a legal standpoint the lease should be made, and you and Mr. Buffington then agree, I shall be glad to take up the whole question for final disposition.

Yours very truly,

(Sgd) E. H. GARY,
Chairman.

(President's File No. 1303)

ELGIN, JOLIET AND EASTERN RAILWAY CO.,
December 28th, 1905.

Mr. E. H. GARY,
Chairman Board of Directors,
U. S. Steel Corporation, New York, N. Y.

DEAR SIR: Referring to your letter of October 20th, and my letter to you of October 18th, in reference to consolidating the Chicago, Lake Shore & Eastern and the Elgin, Joliet and Eastern Roads.

After reading the President's message to Congress, I am more firmly convinced than ever of the urgent necessity of putting these two properties together. Congress will undoubtedly pass a law giving greater authority to the Interstate Commerce Commission, as special mention was made by the President in reference to Terminal and so-called Industrial Roads.

It is unfortunate that the C., L. S. & E. Ry. serves practically one industry, the Illinois Steel Company, and I believe the Corporation will be benefited, as a whole, by the consolidation of the C., L. S. & E. with the E., J. & E. Railway. This consolidation will, undoubtedly, prove a hardship to the Illinois Steel Company, but it it better (in my mind) that the Illinois Steel Company, as a constituent company should suffer some loss and the Corporation benefit by the same, than to have the Illinois Steel Company suffer a loss and the Corporation not benefit by the same.

The question of allowances to Terminal Railroads will not down, and if other so-called Industrial Railroads will accept switching charge of $2.00 or $3.00 per car for services practically identical

with that performed by the C., L. S. & E. Ry. then it is only a question of time (and a short time at that), when the C., L. S. & E. Ry. is forced to give up its divisions and accept a nominal switching charge for its service.

By the consolidation of the C., L. S. & E. Ry. with the E., J. & E. Ry. and the E., J. & E. Road being the operating Company, we fortify our position and can demand, and it can be legally allowed in my opinion, the same divisions on business to and from the Illinois Steel Company that it receives on business for all other of its patrons.

It has been suggested to me by Mr. Hyman of the Illinois Steel Company that one solution of this problem would be for the Federal Steel Company to take over the bonds of the C., L. S. & E. Road, and the Illinois Steel Company to buy the stock of the E., J. & E. Road from the Federal Steel Company, consolidate the two roads and let all the profits accruing to the E., J. & E. Road go to the Illinois Steel Company, thus reducing the manufacturing cost of the Illinois Steel Company by taking up the profits of the E., J. & E. Road. I do not believe that would be policy, and for this reason: 75% of the present business of the E., J. & E. Road is derived from business other than that of the Corporation. I mean by that, that 75% of the present earnings of the E., J. & E. Ry. is received on its local business and its through business that has no connection in any shape or manner with the business of the United States Steel Corporation. If it were known, and, of course, it would be known, that the Illinois Steel Company was the owner of the E., J. & E. Road, we would be placed in the position of being attacked by every shipper over the E., J. & E. Ry., with discriminating in our cars and service in favor of the Illinois Steel Company. That charge has recently been made to me by the Coal Operators on the E., J. & E. Road, who stated that prior to the formation of the Federal Steel Company, they were at all times amply supplied with E., J. & E. equipment for their coal mines; that since the formation of the Federal Steel Company, that the Illinois Steel Company has had the first call on E., J. &. E. equipment and that their mines have not been supplied with cars. Unfortunately this is true to a certain extent, as we have endeavored at all times to take care of the constituent companies of the Corporation in supplying them with cars.

I do not know whether the Illinois Steel Company could legally own the E., J. & E. Road, but if they could, I do not believe it would be policy for the Steel Company to be the owner, and I think the Corporation would be placed in a bad light if they allowed the Illinois Steel Company to be the owner of the E., J. & E. Road. I feel that the Bureau of Commerce and Labor will undoubtedly make investigation into the business of the Steel Corporation the same as they have into the business of the so-called Beef Trust, and I think that the Corporation would be in a better shape if it would show that the C., L. S. & E. Ry. was leased, on a reasonable basis, to the E., J. & E. Road, and that the rental of $500,000.00 per year now paid

by the C., L. S. & E. Ry. to the Illinois Steel Co. for the use of the ground on which its tracks are laid in the various plants of the Illinois Steel Co., was abandoned. I do not believe this lease would be looked upon with favor by the investigating committee of the Bureau of Commerce and Labor. I think they would call it a subterfuge. I believe it would be the part of wisdom for the Corporation to put its railroads on a strictly legitimate and high plained basis. The revenues and profits would not get away from the Corporation; it would affect the Illinois Steel Company.

As to any adjustments that might be made of the earnings of the E., J. & E. Ry., should it take over the C., L. S. & E. Road, that would probably be a question of book-keeping in the New York office, and as to that, I have no suggestions to offer. My only thought is to get ourselves in as clean business shape at as early a date as possible, so as to prevent any adverse criticism in regard to the relations between the Illinois Steel Company and its railroads, and to fortify our position so that we can demand legally and reasonably, and accept divisions that should be accorded by our connections to us, not only on Illinois Steel Company business, but on all other business that originates or terminates on the line of the E., J. & E. Road. The President's message deals with fair and equitable divisions that should be accorded by the larger roads, or Trunks Lines, to the smaller roads connecting with such Trunk Lines. The consolidation of the E., J. & E. and the C., L. S. & E. Railways would give to the E., J. & E. fair divisions, not only on its present traffic, but on the traffic that it would handle to and from the Illinois Steel Company.

I shall be pleased to have an early reply from you as to your wishes in this matter.

Yours truly,

A. F. BANKS, *President.*

(President's File No. 1303)

ILLINOIS STEEL COMPANY,
December 30th, 1905.

Mr. E. H. GARY,
Chairman, United States Steel Corporation,
Empire Building, New York.

DEAR SIR: Mr. Banks, Mr. Knapp, and I have carefully considered the suggestion to lease the C., L. S. & E. Ry. to the E., J. & E. Ry., and have concluded to recommend that it be done. In the light of recent developments concerning railroad matters. Mr. Knapp is of the opinion that the carrying out of this suggestion will tend towards safeguarding the freight divisions, now being allowed the C., L. S. & E. Ry. by its connecting lines against a reduction of such divisions under some possible application of the Interstate Commerce Laws. These allowances of freight divisions constitute a large part of the earnings of the C., L. S. & E., and of course should be safe-

guarded to the furtherest extent. I fear, however, that this will result in separating the earnings of the Railroad so far from the earnings of the Illinois Steel Company that our showing of costs and profits will be materially disadvantaged. Perhaps our accounting officers can devise means for overcoming this objection, in part at least.

Mr. Knapp is preparing to submit for your consideration a definite plan for carrying out the suggestion.

Yours truly,

(Sgd.) E. J. BUFFINGTON,
President.

(President's File No.)

UNITED STATES STEEL CORPORATION,
New York, January 3rd, 1906.

Mr. A. F. BANKS,
President, E., J. & E. Ry Co.,
The Rookery, Chicago, Illinois.

MY DEAR MR. BANKS: Referring to the subject-matter of your letter of the 28th ult., and other letters concerning a proposition to lease the Chicago, Lake Shore and Eastern to the Elgin, Joliet & Eastern: Although I still have some doubts that the proposed action is necessary or will be beneficial, yet as all of you in the West favor the proposition I suggest you have a form of lease drawn and sent to me for consideration. I suppose so far as the interests of the Illinois Steel Company are concerned the question of the rental to be paid is the one to be considered.

Yours very truly,

(Sgd.) E. H. GARY,
Chairman.

(President's File No. 1303)

ELGIN, JOLIET AND EASTERN RY. CO.,
January 4th, 1906.

Confidential.
Mr. J. H. REED,
President, B. & L. E. Ry.,
Pittsburgh, Pa.

DEAR SIR: We are considering the advisability of leasing the C., L. S. & E. R. R. to the E., J. & E. R. R., and I would be very much pleased if you would send to me a copy of the lease of the Pittsburgh, Bessemer & Lake Erie R. R. to the Bessemer & Lake Erie R. R.

We are also considering the advisability of making a contact with the Illinois Steel Company for the operation of all terminal switch engines at the Illinois Steel Company's plant, and would be glad if you would give me copy of your agreement between the Union

R. R. and the Carnegie Steel Company whereby the Carnegie Steel Company does all of the internal switching at its various plants for account of the Union Railroad.

Yours truly,

(Sgd.) A. F. BANKS,
President.

[Copy]

UNITED STATES STEEL CORPORATION,
New York, October 15th, 1907.

Hon. E. H. GARY,
Chairman, Board of Directors,
New York, N. Y.

DEAR SIR: I have reviewed Mr. Banks' letter to you of 1st of October, concerning plan for the leasing of C., L. S. & E. Ry. to E., J. & E. Ry. Co., and beg to submit my views thereon as follows:

I do not understand it has as yet been definitely decided it would be policy to make such a lease. Therefore, I suggest Mr. Banks should be asked to advise specifically on the following points:

What advantages will accrue from the merger:

(1) From the standpoint of traffic relations with connecting trunk lines.

(2) In relations with the State and Federal authorities and commissions.

(3) From a taxation point of view.

(4) From an operating point of view.

How would it affect relations with Illinois Steel Company:

(1) Would the present plan of operating tracks within the mill yards be continued, or would some new arrangement be made? If so, what arrangement? The Illinois Steel Company could not afford, from a manufacturing cost standpoint, to release the C., L. S. & E. without getting this service at cost. How could this be accomplished?

(2) Would the $500,000 now paid Illinois Steel annually for rental of land in mill yards on which C., L. S. & E. tracks are located, be continued?

(3) If the merger were made, on what basis would the lessee make rates for Inter-Mill switching service for Illinois Steel, i. e., between South-Buffington—Coke Storage Yard—Gary Plant. The Illinois Steel could not, as a manufacturing cost proposition, afford to release its interest in the C., L. S. & E. if it were obliged to pay for this class of service on a commodity and weight basis.

(4) Would the merger enable the lessee to put into effect any lesser rates than are now charged by C., L. S. & E. for local service, particularly between South and Joliet?

After drafting his responses to the foregoing, Mr. Banks should be asked to submit the same to Mr. Buffington for his review and criticism.

Assuming, after receiving and considering the foregoing, the conclusion be that it would be policy to merge the roads from the viewpoint of the Steel Corporation, notwithstanding, as it is admitted by all, the Illinois Steel would suffer greatly in its manufacturing costs and earnings, then it would seem the general plan proposed by Mr. Banks as the basis for rental is both simple and practicable. Some of the detailed features, however, do not appeal to me. These are as follows:

Instead of providing that the rental should be an amount on C., L. S. & E. stock equivalent to the same percentage of dividend which E., J. & E. may pay on its own stock, I would suggest as follows:

The annual rental shall be:

Four[1] percent on C., L. S. & E. Ry. Co.'s stock, and such an additional percentage on C., L. S. & E. stock as the percentage of dividend paid in any year by E., J. & E. Co. on its own stock, exceeds four percent.

The reason for this is that there ought to be definite rental of some sort as a minimum. Otherwise it would look queer for a road showing as profitable a business as the C., L. S. & E. has had to lease its property without some minimum guaranty.

Mr. Banks proposes the C., L. S. & E. shall issue sufficient additional stock to provide moneys to pay for all new construction work the railroad is now doing in and about Gary; also for the additional equipment it is now buying. This proposition is all right as to the construction work, but the idea has been to finance the equipment by a bond issue—to put us in a position where, if necessary, money could be raised to reimburse the Treasury for the cost of the equipment. Consideration should be given to this point before acquiescing to Mr. Banks' suggestion in this particular.

Mr. Banks proposes that after the lease is executed all improvements made to the C., L. S. & E. shall be charged to that company, and it shall finance them by issuing additional stock which Federal Steel shall purchase. This proposition I do not like. It means the C., L. S. & E. shall raise new money for all additions and betterments to its road, leaving all income from the lessor's property in hands of E., J. & E. with power to use it exclusively for making improvements to the E., J. & E. Road. No lease would ever be made between independent interests on that basis. I think the lease should provide that the lessee, the E., J. & E. should assume and pay for all additions and improvements made to the C., L. S. & E. property, excepting such additions as the lessor may from time to time agree to finance. It may be provided that all additional equipment, also all extensions of main line, all additional second tracks, and all new work now under way in and about Gary, should be financed by the lessor, but all future miscellaneous yard and siding improvements, buildings, etc., should be cared for by the lessee. Any

[1] Probably 7% would be better.

additions to the C., L. S. & E. which it may assume and finance, it should be provided, are to be added to the capital on which the rental charge paid by the E., J. & E. is based.

The lease must also make some provision for turning over to the lessee such working assets and liabilities of the lessor as the latter may have at the time of transfer and which the lessee may require. The net of these should constitute and advance or loan, between the two companies, to be repaid in working assets or cash if the lease is cancelled. This feature would have to be worked out in the light of the conclusions which may be reached concerning the other features referred to in this letter. This would also be the case in respect of the reserve and depreciation funds the C., L. S. & E. may have.

Yours respectfully,

(Signed) W. J. FILBERT,
Comptroller.

DECEMBER 3rd, 1907.

Hon. E. H. GARY,
Chairman, Board of Directors,
U. S. Steel Corporation, New York.

DEAR SIR: Referring to letter from Comptroller Filbert to you under date of October 15th, concerning proposed plan for the leasing of the Chicago, Lake Shore & Eastern Railway to the Elgin, Joliet & Eastern Railway; Mr. Filbert asks:

What advantages will accrue from the merger:

(1) From the stand-point of traffic relations with connecting trunk lines.

The Chicago, Lake Shore & Eastern Railway to-day receives divisions from connecting lines. It has a short haul of about eleven miles on the larger portion of traffic received from connecting lines. The Interstate Commerce Commission held an investigation of the divisions accorded to the Chicago, Lake Shore & Eastern Railroad and while no ruling was made reducing our divisions, the intimation was given that the Chicago, Lake Shore & Eastern Railroad was a terminal or switching road, performing only a switching service and was only entitled to switching revenue.

You are familiar with the arguments we presented before the Commission and the answers made by me to them, when I went into the details of our operation, our furnishing cars, valuable terminal facilities which could not be replaced and the unusually large amount of work that was necessary for us to perform in making deliveries of freight to the Illinois Steel Company, and that in view of this large amount of work, that our compensation was not unreasonable.

We also have the report of the Committee composed of Messrs. W. C. Brown, of the New York Central Lines; G. L. Peck, of the Pennsylvania Lines; and G. L. Potter, of the Baltimore & Ohio Railroad, who, after a thorough investigation of the services performed by, and the value of the Chicago, Lake Shore & Eastern

Railway's terminals, reported that the Chicago, Lake Shore & Eastern Road should, in their opinion, receive a maximum allowance of forty cents per ton as a division of the through rate for its terminal services, they stating that the Chicago, Lake Shore & Eastern Railway perform an unusually large amount of terminal services, and that its terminal facilities were valuable, and that an allowance of forty cents per ton was only a fair compensation for its services and a fair return on its investment.

The Illinois Railroad & Warehouse Commission are now investigating the charges made by the so-called terminal lines in the Chicago District, and also the switching charges made by all Railroads in the Chicago District.

At the recent hearing the Illinois Central reported to the Commission that their Company owned valuable terminal facilities in Chicago for the purpose of caring for their own business; that they could not, in fairness, be called upon to handle business for competing or connecting lines at Chicago over their terminals on a low switching rate of $2.00, $3.00, or $5.00 per car, as the interest on the investment on their terminals, plus the cost of the service, was far in excess of $2.00, $3.00, or $5.00 per car. They showed that in many cases it was costing $12.00 to $15.00 per car to switch from their connections at Chicago to and from their own terminals.

The same argument could be applied by the Elgin, Joliet & Eastern Road were it to lease the Chicago, Lake Shore & Eastern Ry. It could make the claim that it had its terminals at South Chicago and Gary for the purpose of taking care of its own business, and therefore was entitled to a fair division of the through rate, and as the Elgin, Joliet & Eastern Railway has also accorded all of its connections the same divisions, regardless of the haul of the Elgin, Joliet & Eastern Road, we would not be practicing any discrimination and yet be in a position to demand, and I believe, justify our demands for a fair division of the rate, to compensate us for the services that we performed, and a fair return on the investment that we made in our railroad properties and railroad facilities.

In discussing the Elgin, Joliet & Eastern Road with Commissioner Lane of the Interstate Commerce Commission, he says in his opinion no fault could be found with the Elgin, Joliet & Eastern Railway's division, even though we only hauled a car a distance of a mile for one road and 75 miles for another Road, if we made our divisions the same vial all Roads, as we are simply giving to industries located on our line, and patrons of our Road, the facilities of all the Railroads entering Chicago instead of one railroad; and that no discrimination is made by us, either to the railroads or to the shippers by such action on our part.

Whereas, if the Chicago, Lake Shore & Eastern Railway remained an independent road, it could be claimed that it has no freight business other than that of the Illinois Steel Company's, and therefore,

is only a terminal road serving the Illinois Steel Company, the Indiana Steel Company, and the Cement Plant; that the Illinois Steel Company is its owner, and, therefore, derives all the benefit of the earnings accruing to the Chicago, Lake Shore & Eastern Railway.

On the other hand, if the Chicago, Lake Shore & Eastern Railway is leased to the Elgin, Joliet & Eastern Road, the earnings of the combined roads are spread over a combined mileage, showing a less earning, per mile, of the combined roads than would be shown, per mile, if the Chicago, Lake Shore & Eastern Road is an independent line.

The two roads together, in my opinion, are in a better position to retain the present divisions, than the Chicago, Lake Shore & Eastern Road will be if it remains an independent property. If the roads are allowed to remain separate, I think it is only a question of a short time until all connections of the Chicago, Lake Shore & Eastern Railway bring before the Interstate Commerce Commission, the question of the Chicago, Lake Shore & Eastern Railway Company's earnings and divisions, and demand that the Chicago, Lake Shore & Eastern Road be allowed only a switching rate instead of divisions. If that is done, it will mean a very great loss to the Corporation.

(2) In relations with the State and Federal authorities and commissions.

We believe that we will not be violating any State laws or Federal laws in leasing the Chicago, Lake Shore & Eastern Railway to the Elgin, Joliet & Eastern Railway. We believe that we will strengthen our position with the Interstate Commerce Commission by such a merger, for the reason given in our answer to query number one.

(3) From a taxation point of view.

We believe that the leasing of the Chicago, Lake Shore & Eastern Railroad to the Elgin, Joliet & Eastern Railroad will not increase the taxes, but may possibly enable us to decrease them.

(4) From an operating point of view.

There would undoubtedly be considerable saving in expenses from an operating stand-point to both roads. To-day we are operating each road separately, thus necessitating more clerks to keep the separate accounts, more officials than would be required if the roads were put together. There would be a great saving in the mechanical end, through the merging of the shops, machinery, and facilities. We necessarily have to do a considerable amount of work for the Chicago, Lake Shore & Eastern Road at the Elgin, Joliet & Eastern Railway's shops. This means switching of equipment by the Elgin, Joliet & Eastern for the Chicago, Lake Shore & Eastern Road, for which the latter Company, as a matter of course, must pay. It means the making of bills by one road against the other, and in numerous ways adds to the cost of both Companies, which could be overcome by the merging of the properties.

How would it affect relations with Illinois Steel Company:

(1) Would the present plan of operating tracks within the mill yards be continued, or would some new arrangement be made? If so, what arrangement? The Illinois Steel Company could not afford, from a manufacturing cost standpoint, to release the C., L. S. & E. without getting this service at cost. How could this be accomplished?

We believe that if the Roads were merged that we can assign a sufficient number of engines to the Illinois Steel Company and the Indiana Steel Company to do all of the internal switching, and in consideration of the Superintendents of the Mills at South Chicago and at Gary assuming the supervision of these employes, that we can pay all expenses of the engines and crews for doing the internal work, and by so doing they would then get all of their internal switching performed without cost. This, I understand, is practically the same practice that governs with the Union Road at the Carnegie Steel Company's Plants.

(2) Would the $500,000.00 now paid Illinois Steel annually for rental of land in mill yards on which C., L. S. & E. tracks are located, be continued?

I should in answer to that query, say "No." I have never felt that we could defend this rental that is now being paid by the Railroad to the Illinois Steel Company for tracks on the Illinois Steel Company's grounds inside their mill yard, which tracks are wholly and solely for the purpose of serving the Illinois Steel Company. I think it is perfectly proper for the Railroad to own the tracks and to maintain them, but to pay a rental of $500,000.00 per year for the use of ground on which to lay the tracks, to perform a service wholly and solely for one company, is a proposition that could not be defended before any Court of the Interstate Commerce Commission, and I am afraid that if the matter is ever brought up by the Commission, it will prove a very troublesome question for the Corporation, and I think that the sooner this matter can be disposed of the better it will be for the Corporation.

(3) If the merger were made, on what basis would the lessee make rates for Inter-Mill switching service for Illinois Steel Company, i. e., between South—Buffington—Coke Storage Yard—Gary Plant? The Illinois Steel Company could not, as a manufacturing cost proposition, afford to release its interest in the C., L. S. & E. if it were obliged to pay for this class of service on a commodity and weight basis.

I believe that if the merger were made, we would be in a better position to defend a low commodity rate on granulated cinders from South to Buffington than now prevails. In other words, the Interstate Commerce Commission will not object to a rate being published by a Railroad that is open to all shippers. We have, however, refrained from making a less rate between South Chicago and Buffington than the minimum allowance that we receive from connecting lines on other commodities. The reason for this was our attempt to defend the divisions that the Chicago, Lake Shore &

Eastern Railway receives on connecting-line business. I think our practice in the past has been correct, but I believe that with the merging of the Roads we can make a reduction. I think, further, that we could move coke from the storage yards to South Works and to Gary at a nominal charge, giving as our reasons for so doing, that the Steel Company has this storage yard for the purpose of releasing our equipment promptly, thus benefitting the Railroads, and that we should not impose a burden on the receiver of the freight in his efforts to facilitate the movement of cars, and expedite the movement of business.

(4) Would the merger enable the lessee to put into effect any lesser rates than are now charged by C., L. S. & E. for local service, particularly between South and Joliet?

I believe that we could make a less rate on iron ore from South Chicago to Joliet than we now have, and could do that by agreement with other Railroads who handle no iron ore. As to reduced rates on other commodities, I do not believe we could make any reduction, for the reason we must charge the same rates between South Chicago and Joliet as the Chicago & Alton, Santa Fe, and Rock Island are charging between Chicago and Joliet. The Steel Corporation must not, by its own road, put in rates for its own constituent companies that serve to reduce the rates of other Railroads on shipments made by its patrons and competitors of the Steel Company. In other words, we must assist our competing railroads to get reasonable compensation for their service from outside parties, and to do this, we must charge reasonable rates for handling the business of our constituent companies.

Referring to paragraph reading:

"Instead of providing that the rental should be an amount on C., L. S. & E. stock equivalent to the same percentage of dividend which E., J. & E. may pay on its own stock, I would suggest as follows:

"The annual rental shall be:

"Four percent—probably seven percent would be better—on C., L. S. & E. Ry. Co.'s stock, and such an additional percentage on C., L. S. & E. stock as the percentage of dividend paid in any year by E., J. & E. Co. on its own stock exceeds four per cent."

I agree with Mr. Filbert on this point and believe it would be better to have the Elgin, Joliet & Eastern Railway pay seven percent, or possibly a greater percent, on Chicago, Lake Shore & Eastern Railway's stock, and after the Elgin, Joliet & Eastern Railway has paid four percent on its own stock, that any additional earnings applicable to dividends, should be divided share and share alike between the Chicago, Lake Shore & Eastern Road and the Elgin, Joliet & Eastern Road.

I would be in favor of the Chicago, Lake Shore & Eastern Road issuing additional stock to pay for all the new construction work it is now doing in the vicinity of Gary, but that all new equipment

should be paid for in bonds and that the Elgin, Joliet & Eastern Railway should pay the interest on these bonds, and set aside a sinking fund to retire the same.

I do not believe Mr. Filbert thoroughly understood my proposition in regard to the Chicago, Lake Shore & Eastern Railway paying for additional improvements. All ordinary improvements should be paid for by lessee, but if it is decided to extend the Chicago, Lake Shore & Eastern Railroad, say, to Michigan City, Indiana, the Elgin, Joliet & Eastern Railroad should not be called upon, as the lessee of the Chicago, Lake Shore & Eastern Road, to finance this extension; or, if it is decided to build some large yards to take care of other Steel Plants that might locate in the vicinity of Gary, then the construction of these yards, and the building of tracks to same, should be charged to construction of the Chicago, Lake Shore & Eastern Railway, stock issued therefor, and the Elgin, Joliet & Eastern Railway guarantee like dividends on this stock.

I quite agree with Mr. Filbert that the lease, if made, should also make some provisions for turning over to the lessee such working assets and liabilities of the lessor as the latter may have at the time of transfer and which the lessee may require. The net of these should constitute an advance or loan between the two companies, to be repaid in working assets or cash if the lease is cancelled, and that this should also apply in the case of the of the reserve and depreciation funds the Chicago, Lake Shore & Eastern Railway may have upon its books.

Yours truly,

A. F. B.

(President's File No. 1303)

UNITED STATES STEEL CORPORATION,
OFFICE OF THE COMPTROLLER.
December 28th, 1907.

Personal.
Mr. A. F. BANKS,
President, Elgin, Joliet, and Eastern Ry.,
Chicago, Illinois.

DEAR SIR: I return the draft of proposed letter which you left with me three weeks ago. I have gone over it carefully several times. Your letter is very comprehensive, i. e., it covers the ground fully, but in my judgment your responses to the following:

Question (1) at bottom of page 5,
Question (3) at top of page 7,
Question (4) at bottom of page 7,

are not wholly satisfactory, in that they are not sufficiently conclusive. You express the opinion that certain results can be reached. Now, to me the matters seem of vital importance to Illinois Steel. and before acquiescing to the proposed merger, they should have

absolute and positive assurances. Otherwise, they could not afford from a manufacturing standpoint to sacrifice the great benefits which their railroad is to them as purely an operating accessory. It is unfortunate you cannot see your way clear to make lower rates between South and Joliet on commodities other than ore. Still, as long as the Steel Company would, under the new deal, be giving up as a manufacturing proposition the benefit which accrues to it in other directions, and which in amount is largely in excess of the South-Joliet business, I suppose the loss of this latter would not be large, comparatively. After all the crux of the matter, in my mind, is in the first problem you touch on. "What advantages would accrue from the standpoint of traffic relations with connecting trunk lines." And that is too deep and complex a question for me to grasp.

Yours truly,

W. J. FILBERT, *Comptroller.*

(President's File No. 1303)

CHICAGO, *January 14th, 1908.*

Memorandum

Leasing of the C., L. S. & E. Road to the E., J. & E. Road.

The letter addressed to Judge Gary under date of December 3rd was delivered to Judge Gary in person on January 10th. After discussing the same with Mr. Knapp, Mr. Chas. McVeagh, and myself, Judge Gary suggested that Messrs. Knapp, MacVeagh, and myself confer with Mr. Stetson and get his views upon the subject.

We met Mr. Stetson at his office on January 10th, and, after a full discussion, Mr. Stetson stated that he thought it advisable to lease the C., L. S. & E. Ry. to the E., J. & E., and suggested that a statement be prepared by me to be submitted to the Stock-holders of the two roads. This statement to show the economies in operation of the two roads by a consolidation or lease, submitting the resolution authorizing the leasing of the C., L. S. & E. Ry. to the E., J. & E. Ry. to a vote of the stock-holders, and the terms of such lease, obtaining ing their approval of the same.

He further stated that he thought it advisable to make this lease effective at an early date.

A. F. B.
AFB M

SEPTEMBER 18, 1912.

Mr. W. J. FILBERT,
Comptroller, United States Steel Corporation,
71 Broadway, New York, N. Y.

DEAR SIR: I feel that the present lease of the Chicago, Lake Shore & Eastern Railroad by the Elgin, Joliet & Eastern Road is unfair to the latter company, and is working a great hardship to that

property. For a number of years prior to the E., J. & E. leasing the Chicago, Lake Shore & Eastern Road, the former Road showed its ability to earn its fixed charges and more than 4% on its capital stock. The present lease of the C., L. S. & E. Road to all intents and purposes limits the earnings of the E., J. & E. Road to 4% upon its capital stock. The lease provides that out of the earnings from the operation of the E., J. & E. Road there shall be paid:

First, Interest on E., J. & E. Bonds.

Second, Interest on C., L. S. & E. Bonds.

Third, 4% upon the capital stock of the E., J. & E. Road. 4/10's, or $4,000,000.00 of this capital stock is held by the Chicago, Lake Shore & Eastern, which Company receives the dividends amounting to $160,000.00 per year.

Fourth, Rental to the C., L. S. & E. of $600,000.00 per year.

Fifth, 7% on the capital stock of the C., L. S. & E. Road.

Sixth, Such proportionate part of the remainder of the surplus earnings for such year as twice the par value of the then outstanding capital stock of the Chicago, Lake Shore & Eastern bears to the sum of the par value of the then outstanding capital stock of the Elgin Company, plus twice the par value of the then outstanding capital stock of the Chicago, Lake Shore & Eastern Road.

This means that the Chicago, Lake Shore & Eastern would receive 18/28's and the Elgin, Joliet & Eastern 10/28's of any surplus remaining after the above amounts had been paid.

This is quite a burden to the E., J. & E. Road and precludes it (if it continues to pay this dividend) from earning much if anything for additions and improvements. Before the E., J. & E. gets anything for additions and improvements, it must earn at least $1,630,000.00 over and above the bond charges of the E., J. & E. and the C., L. S. & E. Roads, and then for every $100,000.00 it earns in excess of this $1,630,000.00, it receives only $35,000.00. In short, to get $100,000.00 a year, a very small amount for additions to the E., J. & E. proper, it must earn about $2,000,000.00 above interest charges, and it must do it each year, for if it falls down for a year or so, the accumulative feature in the rental item comes in and gathers up the excess to a very large extent.

I think you will agree with me that this is unfair to the E., J. & E. Road, and I think that Article 6, shown on page 7 of the printed lease of the Chicago, Lake Shore & Eastern to the E., J. & E. Road, should be amended to read as follows:

"In the event that there shall be any surplus earnings of the Elgin Company on the first day of December in any year growing out of the operation by it of its own property, and the property hereby demised and leased during such year, after payment of the sums herein in Section five mentioned to be paid, and after deducting interest upon said outstanding bonds of said Elgin Company above mentioned then accrued, and after deducting the necessary funds for maintenance and depreciation, which shall be set aside for each

party hereto separately, and to provide for the setting aside on said date for the surplus account of the E., J. & E. Road the sum of $650,000.00, said Elgin Company shall make or cause to made to said Chicago Company the following payments in the order named, to the extend that the amount of said surplus earnings will permit.

First. On the first day of December, in the year 1909, Three Hundred Thousand Dollars ($300,000.00), and on the first day of December, in each succeeding year thereafter the sum of Six Hundred Thousand Dollars ($600,000.00).

Second. An amount equivalent to and not exceeding 5% per annum on the then outstanding capital stock of the said Chicago Company.

Third. Such proportionate part of the remainder of the surplus earnings for such year of the par value of the then outstanding capital stock of the Chicago Company bears to the sum of the par value of the then outstanding capital stock of the Elgin Company.

Out of the $650,000.00 to be set aside for the E., J. & E. Railroad that Company could pay 4% on its capital stock, leaving it $250,000.00 per year, it earned, to be used for betterments or additions to its property. This, I believe; the E., J. & E. Road is entitled to.

The net results of this modification of the contract would be as follows:

First. C., L. S. & E. would receive 4% on the $4,000,000.00 of stock in the E., J. & E. Road held by the former Company, or $160,000.00.

Second. Rental paid by the E., J. & E., $600,000.00.

Third. Dividend; 5% on C., L. S. & E. stock. Amount now outstanding being $9,000,000.00, this would amount to $450,000.00.

Total revenue to the C., L. S. & E. Road, exclusive of interest on its bonds, $1,210,000.00, and in addition thereto, would receive 9/19's on any surplus earnings over and above the above amounts paid to the C., L. S. & E. by the E., J. & E. Road. The E., J. & E. Road is also paying to the stockholders of the Chicago, Lake Shore & Eastern Road an annual fixed rental of $56,000.00 on the Chicago, Milwaukee & Bay View Road, which is the railroad property at Bay View; the Chicago & Kenosha Road; the Joliet & Blue Island and the Chicago & Southeastern Road, and, as you know, maintains these properties and operates them for the benefit of its stockholders at a loss to the Elgin, Joliet & Eastern Road, they being merely plant facilities and having no physical connection with the E., J. & E. Road, except the Joliet & Blue Island, which is located at Joliet.

I will admit that under the common ownership of the stock of these railroads, namely, the E., J. & E. and the C., L. S. & E. Road, it is immaterial through what channels the earnings of the railroad property should arrive in the treasury of the United States Steel Corporation, but in all fairness to the E., J. & E. and the individual companies, I think this change, above suggested, should be made in the lease.

I would like very much for you to give the matter your careful consideration so that when Judge Gary returns home you and I can take the matter up with him to see if it meets with his approval. I feel confident that this proposition is so fair that it can not meet with any opposition on the part of Mr. Buffington, whose manufacturing Company owns the stock of the Chicago, Lake Shore & Eastern Road.

Thanking you in advance for the attention I know you will give this matter, I am,

Yours very truly,

President.

(President's File No. 1303)

UNITED STATES STEEL CORPORATION,
New York, September 23, 1912.

Mr. A. F. BANKS,
President, Elgin, Joliet & Eastern Ry. Co.,
Chicago, Illinois.

DEAR SIR: I have received and noted your letter of the 18th inst., concerning amendment of E., J. & E.—C., L. S. & E. lease.

As I personally have stated to you, and as I have similarly expressed myself to Mr. Buffington, I believe the terms of the present lease are unduly onerous to the E., J. & E. Ry. Co.

Do you not think, however, that the better way to take up the question of a possible adjustment is for you to first approach Mr. Buffington on the subject and then submit your joint views to Judge Gary. I feel that Judge Gary would prefer not to consider the matter until both you and Mr. Buffington had first reviewed the entire situation. If you and Mr. Buffington can agree on a joint recommendation I believe that would greatly facilitate a decision on Judge Gary's part. Anyhow, before I present the subject to Judge Gary I feel you had better take it up with Mr. Buffington.

Yours truly,

(Signed) W. J. FILBERT,
Comptroller.

J. H. C.

B.
Dictated by Mr. Filbert.

AFB–M
JANUARY 22ND, 1914.

Personal.

MY DEAR MR. FILBERT: Have you had an opportunity of talking with Judge Gary concerning the question of the modification of the lease between the E., J. & E. and the C., L. S. & E. Roads? I would

like to get this matter settled. The present lease is such a burden upon the E., J. & E. Road that I feel it extremely unfair, and I feel sure that Judge Gary does not want either one of the properties to have anything that isn't fair. When you feel the opportunity is ripe for me to come to New York and talk this matter over with Judge Gary, I would be glad to do so.

Yours very truly,

(Sgd.) A. F. BANKS,
President.

Mr. W. J. FILBERT,
Comptroller, United States Steel Corporation,
71 Broadway, New York, N. Y.

(President's File No. 1303)

UNITED STATES STEEL CORPORATION.
OFFICE OF THE COMPTROLLER.
New York, January 24, 1914.

DEAR MR. BANKS: I have your personal letter of the 22nd instant. Yes; I had a talk with Judge Gary about this matter on Monday afternoon, the 19th instant. He said that he would be glad to take up the matter after his return from the South, which I understand will be about the middle of February. In the meantime, I will prepare certain figures for presentation in manner which will I think exemplify in a rather clear way just what the present lease results in for the respective companies. I will see that these figures are sent to you before I review them with Judge Gary. Do you not think I should send these figures to Mr. Hyman also, so that he and Mr. Buffington will likewise be familiar with them. In other words, have before them the same figures which Judge Gary may have in mind when he holds a joint conference, as I presume he will, before finally rendering a decision. I presume there is no legal or other practicable objection why the lease should not be modified. This is a feature to which I have not given any attention. But it might be well for you to sound Mr. Knapp on this, inquiring also whether there is anything in connection with the C., L. S. & E. bond issue and the representations made to purchasers of the bonds, or to the Stock Exchange in listing these bonds, which would make it impossible or undesirable to modify the lease.

In connection with this lease matter, I had a letter from Mr. Hyman the other day concerning the question of treatment in rental settlements of write-offs for abandoned tracks. He rather inclined to the view that each company ought to stand the loss in respect of its own tracks which may be abandoned. I hardly see it this way. Still if they want it that way, I can hardly imagine that

you will have any objection. For your information, I enclose copy of the letter I wrote Mr. Hyman in reply to his letter.

Yours truly,

(Sgd.) W. J. FILBERT,
Comptroller.

Mr. A. F. BANKS,
President, Elgin, Joliet and Eastern Ry.,
Chicago, Ill.

AFB–A
JUNE 9TH, 1914.

Mr. W. J. FILBERT,
Comptroller, United States Steel Corporation,
New York, N. Y.

DEAR SIR: Referring to my letter to you under date of January 27th, and further replying to your letter of January 24th. I have had the Auditor prepare for me the following figures showing the disposition of the earnings of the E., J. & E. Road after paying operating expenses since the lease of the Chicago, Lake Shore & Eastern Railway on June 1st, 1909, to and including December 31st, 1913.

Interest on bonds	$2,291,666.67
Dividend on capital stock (excluding stock held by the C., L. S. & E. Road	1,100,000.00
10/28's of surplus, June 1st to November 30th, 1909	154,398.74
10/28's of surplus, December 1st, 1909 to December 31st, 1913 (less Contingent Fund $40,085.70)	321,497.00
Total	3,867,562.41

The total amount for account of the E., J. & E. Ry., excluding the interest on bonds, is equivalent to 5.7% on the E., J. & E. capital stock, excluding the E., J. & E. stock held by the C., L. S. & E. Road.

During this same period the results to the Chicago, Lake Shore & Eastern Railway have been as follows:

Interest on bonds	$1,876,250.00
Dividends on E., J. & E. stock, $160,000.00 per year	733,333.34
18/28's of surplus, June 1st to November 30th, 1909	277,917.73
18/28's of surplus, December 1st, 1909 to December 31st, 1913 (less Contingent Fund $72,154.26)	578,694.61
Rental, $600,000.00 per year, June 1st, 1909, to December 31st, 1913	2,800,000.00
Interest on construction expenditures	342,461.85
Rental 7% annually on $9,000,000.00 stock, June 1st, 1909 to December 31st, 1913	2,887,500.00
Total	9,476,157.53
During the period of this lease, covering 55 months, the net result to the E., J. & E. Road (after paying interest on bonds, and 4% on its stock) is (less Contingent Fund $40,085.70)	475,895.74
or an average per year of	103,907.36
The C., L. S. & E. received (after paying interest on its bonds, and 7% on its stock $2,887,500.00. Also dividends on E., J. & E. stock held by the C., L. S. & E.	733,333.34
Rental, $600,000.00 per year, June 1st, 1909, to December 31st, 1913	2,800,000.00

18/28's of the surplus earnings of the E., J., E. (less Contingent Fund $72,154.26)	$856,612.34
or a total in excess of its interest on its bonds, and 7% on its stock (Less Contingent Fund $72,154.26)	4,389,945.68
as compared with	475,895.74
received by the E., J. & E. (less Contingent fund $40,085.70).	

The total amount received by the C., L. S. & E. in excess of interest on bonds, and interest on its construction expenditures was (less Contingent Fund, $72,154.26) $7,277,445.68, or equal to 16.6% per year on its capital stock of $9,000,000.00, while the E., J. & E. received in dividends (exclusive of dividends paid to the C., L. S. & E. on the $4,000,000.00 stock of E., J. & E., held by the C., L. S. & E. Road) and its 10/28's of the surplus (less Contingent Fund, $40,085.70), the sum of $1,575,895.74, or practically 5.7% on its capital stock (excluding the stock held by the C., L. S. & E.) or practically 12% less than was received by the C., L. S. & E. Railway.

I think you will admit that after four years and seven months operation under the present lease that the E., J. & E. Road having been able to only accumulate a surplus (after paying 4% on its stock) amounting to $475,895.74 (and if this amount is then charged with the property abandoned, it would make its surplus for this period $406,155.88), it is not a sufficient amount. If the lease is allowed to continue, there is no show for the E., J. & E. Road to be able to make any improvements, additions, or betterments to its property out of its earnings. This is unfair in my opinion. I think the lease when it was originally drawn and so stated was unfair to the E., J. & E. Road. The four years and seven months operation has proven that the lease is a burden to the E., J. & E. Road.

You will remember that our earnings on coke shipments have been decreased about 70% on account of the decision that we should no longer receive a rate per ton but should receive a given rate per car.

We have about 140 miles of track to maintain within the Gary Plant, which costs us more money per mile for maintenance and renewals than our main line mileage. The Steel Company operates as many or more switch engines within the Gary Plant than the E., J. & E. Railroad and contributes nothing whatever to the maintenance and renewals of the tracks used by their engines. Many of the tracks are used exclusively by their engines.

We have a thousand coke cars that cost us about $150,000 last year for steel plates to make them suitable for carrying the by-products coke. These cars were originally latticed steel cars and had to be made solid bodies so as to prevent the wasting of the coke. The revenue received by the railroad for the handling of this coke does not compensate it for its investment and the service it performs.

When there is slack business in the Steel Company's plant, we cannot reduce our operating expenses in proportion to the reduction of the plant. As an illustration—At Joliet there are four blast furnaces. The Steel Company can close down one furnace or 25% of

their capacity and yet we cannot withdraw a single man or a single engine on account of the same. We have less work for our engines to do but the other three blast furnaces must be taken care of and therefore our expenses are not reduced. They can make a further reduction by taking out another blast furnace, thus reducing their capacity 50% and still we will not be able to take off a single man or an engine engaged in serving their furnaces.

The results of our operation since the first of the year under our present lease, shows a balance of $18,171.70 or a deficit of $325,161.62 in amount, necessary to pay 4% on E., J. & E. and 7% on C., L. S. & E. stock and the dividends on C., L. S. & E. stock is cumulative. This burden should not be placed upon the E., J. & E. Road. If we earn a surplus, I think it should be divided between the two companies, but our obligations beyond the interest on their bonds and the bonds of the E., J. & E. should not be cumulative.

I feel that the lease of the C., L. S. & E. should be changed and my suggestions are that the Sixth Article on Page 7 of the lease between the C., L. S. & E. Road and the E., J. & E. Road should be amended so that after paying the interest on the E., J. & E. bonds and the C., L. S. & E. bonds, that the E., J. & E. Road should then receive out of such surplus earnings an amount equivalent to 5% on its capital stock; the C., L. S. & E. then to receive as rental an amount equivalent to 7% on its capital stock, that any further surplus earnings remaining should on the 31st day of December in each year be divided pro rata between the E., J. & E. and the C., L. S. & E. in accordance with the stock of each company then outstanding.

My reasons for having the E., J. & E.'s dividend increased from 4 to 5% is that the stock of the E., J. & E. is held by the Steel Corporation, and its stock issued in lieu thereof, and we, therefore, should pay a dividend to the Steel Corporation equivalent to the amount of the dividend paid by the Steel Corporation on its stock issued against each E., J. & E. holdings.

I would suggest that in the payment of such dividend on the E., J. & E. same be made on the regular 4% basis, which is in accordance with the dividends we have paid for a number of years past, and an extra dividend of 1% to be declared at the same time.

I think you fully realize the position of the E., J. & E. Ry. I am not looking for any advantage for either one of the two companies; desiring only that this lease should now be amended so it shall be fair to both companies, and as above stated, as the lease now stands, I believe it to be unfair to the E., J. & E. Road. If you can concur in my ideas, or can offer me any suggestions or criticisms in this matter, I will be very glad indeed to have you do so, or, if this letter will help you in any way to formulate a plan to be laid before Judge Gary, I will be glad to have you use it.

Yours very truly,

President.

UNITED STATES STEEL CORPORATION,
New York, June 27, 1914.

Mr. A. F. BANKS,
President, Elgin, Joliet & Eastern Railway Co.
Mr. E. J. BUFFINGTON,
President, Illinois Steel Company.

DEAR SIRS: I herewith confirm the conclusion reached at our conference on 24th instant as to a modification of the lease of the C., L. S. & E. Ry. to E., J. & E. Ry. Co., to-wit:

The existing lease is to be modified so that the rental payments by E., J. & E. will be on the following basis and plan:

1st. An amount equal to the interest on C., L. S. & E. Ry. Co. Bonds outstanding.

2nd. An amount equal to 5% interest rate on Additions and Betterments to the property paid for by C., L. S. & E.

3rd. After deducting from the net or surplus earnings the rental items as above and (a) the interest on E., J. & E. bonds outstanding and (b) dividend of 4% annually on E., J. & E. stock outstanding (the same to be cumulative if not earned annually) additional rental shall be paid from the net earnings remaining, if any, as follows:

(a) An amount equal to 7% on the C., L. S. & E. Ry. Co. stock outstanding. This payment to be cumulative if each year's earnings are not sufficient to meet it.

(b) An amount of $250,000 per annum, non-cumulative.

4th. And if there remains net or surplus earnings, in each year after making the rental payments and deductions as above provided, then out of such net an additional rental amount to be paid determined by same method as prescribed in paragraph "3rd", Section Sixth of present lease. (This is the 18/28th item.)

The modification of lease as above to be made effective as of December 1st, 1913. E., J. & E. to promptly settle with C., L. S. & E. for any rentals accrued prior to December 1, 1913, and not yet accounted for. Rental accounts accrued since December 1, 1913, to be adjusted in accordance with terms of modified lease.

It was understood each company will for itself assume and pay all Federal Income Taxes assessed against it; such taxes will not be included in the joint account for determination of rentals due.

It was also understood the E., J. & E. was to retain possession of cash funds representing proper depreciation allowances account of C., L. S. & E. property which the former may include in the operating expenses charged the joint account for purpose of determining rentals due; and any interest income received by it on such cash funds are to be retained by E., J. & E. for itself and not be included in such joint account.

It is understood you will have Mr. Knapp at his early convenience prepare a revision of the present lease so as to reflect the foregoing modifications and understandings. When this draft is made please

submit it through Mr. Filbert to Mr. MacVeagh for review before executing it.

Yours truly,

(Signed) E. H. GARY, *Chairman.*

AFB:C

DECEMBER THE 6TH, 1917.

Mr. W. J. FILBERT,
Comptroller, United States Steel Corporation,
71 Broadway, New York, N. Y.

DEAR SIR: Referring to Mr. Knapp's letter to you of December 5th enclosing Two copies of a draft of lease of the Chicago, Lake Shore & Eastern Ry. Co. to the Elgin, Joliet & Eastern Railway Co., modified in accordance with conference which he and Mr. Fisher had with you recently in New York.

Mr. Knapp calls your attention to the fact that I think in making this new lease we should now give to the Elgin, Joliet and Eastern Ry. a fair deal, and I have never felt that the C., L. S. & E. should receive Two Dollars for each share of its stock to One Dollar for each share of the stock of the E., J. & E. Ry., in the distribution of any surplus earnings.

the E., J. & E. Ry Co. has been compelled (because it was good business and for the interest of the Corporation to do so) to expend large amounts of money for shops and other facilities at Joliet to take care of the power and cars of its own and the C., L. S. & E. road. We have larger facilities than are necessary for the E., J. & E. power and equipment, and if the roads were ever separated these facilities could be much larger than what we would require for the E., J. E. Ry. Co. Again, when business was exceedingly dull in the steel business and mills in Chicago were operating on a 25% basis, the E., J. & E. Ry. Co. carried the burden of the C., L. S. & E. and the E., J. & E. The E. J. E. general business was good, while that on the C., L. S. & E. was very poor. Again, the C., L. S. & E. has been allowed to receive very large returns on its investment while the E., J. & E. has been practically confined to the 4% on its stock. A further reason for giving the E., J. & E. a better division of surplus earnings is to avoid the payment of excess taxes on the part of the Corporation. All profits of the C., L. S. & E. Ry. Co. go to its owner—The Illinois Steel Co. helping to increase the already large earnings of the Illinois Steel Co., and that means as their earnings are greater that they pay a greater percentage of Income Tax, and that takes the money away from the Corporation, while the increase in earnings to the E., J. & E., under the proposed new division of earnings, would not be so large and therefore would not call for as high a rate of taxation, and I believe that the best interest of the Corporation would be conserved by granting at this time in the new lease what I consider an equitable division of surplus earnings after rentals and interest on bonds, and the 7% dividend on the C., L. S. & E. stock and 4% dividend on the E., J. & E. stock is provided for.

In order to get this matter cleaned up at this time, I believe it would be advantageous to have Mr. Knapp and myself meet with you on next Thursday, December the 13th, and see if all the matters cannot be settled at that time, I having to be in New York to attend the Presidents' meeting the following day.

If you agree with me, I would be glad to have you wire Mr. Knapp and myself if you can see us at that time.

Yours very truly,

(Sgd.) A. F. BANKS.

(President's File No. 1303)

[Telegram]

New York, N. Y., 12/8.

A. F. Banks

Y/L 6th. I fear you are selecting a very unsatisfactory date for the conference you mention. Preceeding Presidents meeting on the 14 some important matters will be taken up with respective Presidents who are to be here and which will largely monopolize the time of Judge Gary, Mr. Farrell and myself. Moreover as I wrote Mr. Knapp yesterday I don't believe Judge Gary will consider the question you raise without Mr. Buffington being present. Judge Gary and Mr. Farrell will be in Washington the first two and possibly three days of next week and so it is impossible for me to say at this time whether the Judge could give you and Mr. Knapp a hearing on the date you mention. I venture the guess, however, that he cannot. Is not the question one of policy and trading and not a legal one and therefore not necessarily requiring Mr. Knapps presence. Although it would be very satisfactory if he were here.

(Signed.) W. J. FILBERT.

213 *Government's Exhibit C*

[File endorsement omitted.]

IN RE: TRACKAGE AGREEMENT WITH C. & E. I. R. R. CO.

Contract File 010A

ELGIN, JOLIET & EASTERN RAILWAY COMPANY,
TRAFFIC DEPARTMENT,
Chicago, Ill., December 11, 1914.

Mr. A. F. BANKS,
President, E., J. & E. Ry., Building.

DEAR SIR: Referring to contract covering our trackage on C. & E. I. Railroad, dated February 1, 1909:

On page 7 of this contract, Section 4 reads as follows:

"During the entire term of this agreement, the Lake Shore Company will transport over the Eastern Illinois Lines all coal, coke,

limestone, and other commodities which the Lake Shore Company shall carry from any mine, quarry, plant, or place reached by any of the Eastern Illinois Lines, for the Illinois Steel Company, the United States Steel Corporation, or any other company or plant in which either of them is interested as a stockholder or otherwise."

This would seem to cover all of the commodities in which the United States Steel Corporation are interested.

On page 10, Section 5 reads as follows:

"The Lake Shore Company shall not collect or receive, for the carriage of freight over any part of the railroad of the Eastern Illinois Company, less than the freight charges named in the published tariffs of the Eastern Illinois Company, which shall from time to time be in force, covering the same kind of freight between the same points, and the Lake Shore Company shall not quote or publish less tariff rates for the transportation of freight, between points on the Eastern Illinois Lines and points beyond said lines, than the tariff rates published by the Eastern Illinois Company and in force at the same time between the same points", which would seem to prohibit our handling any business under this contract unless the C. & E. I. Railroad had a published tariff on the specific commodity desired to be handled by us between the same two points that we wished to handle it.

This is all right so far as coal is concerned, as the C. & E. I. Railroad publish the Chicago rates on coal to Gary, Buffington, and South Chicago, but on limestone they publish a rate to Chicago only, and do not publish a rate to South Chicago, Buffington, or Gary.

On quarry strippings and loam they do not publish a rate from Fairmount to Chicago, and are questioning our right to carry the same rate on the strippings and loan that we carry on the limestone to Gary, and they decline to publish the same rates on limestone to South Chicago, Buffington, and Gary, as they publish to Chicago, which, if their contention is correct, would invalidate our limestone rates from the quarries to those stations.

In view of the position taken by the C. & E. I. Railroad Traffic Department, it would appear to be advisable that some definite understanding be had with their management, or the contract amended in such a way as to permit us, without question, to carry the same rates from stations on the C. & E. I. Railroad to our stations on the Gary Division, as are published by the C. & E. I. Railroad to Chicago or Chicago territory on the same and analogous commodities.

Yours truly,

(Sgd.) W. L. LOUIS,
Traffic Manager.

Contract File 010A

ELGIN, JOLIET & EASTERN RAILWAY COMPANY,
Chicago, December 16, 1920.

Mr. A. F. BANKS,
President, Elgin, Joliet and Eastern Ry. Co.,
Chicago, Illinois.

DEAR SIR: Returning herewith the file which you left with me in regard to the C. & E. I. R. R.'s application for an increase in the rate per train mile paid them for trackage rights account of E., J. & E. freight trains operating over its tracks, will advise that on the basis of their own figures I cannot see that they are "furnishing you with a railroad at very much less than it cost to maintain it."

They show a cost of $1.14 per freight train mile, and the E., J. & E. paid in 1917 an average of $1.276 per train mile and for the period March to October 1920, the rate is almost exactly the same, which gives them a profit of 13.6 cents, or 11%.

Also please note that in transportation expenses they include "Station Service", in which we are interested only to a very limited extent, and as these figures are for the "Chicago Division", I suppose they include a very large amount for station service at expensive Chicago terminals, in which we are not interested at all.

Another point in connection with their transportation cost is that while it is theoretically correct to allocate it pro-rata on a train mile basis when attempting to learn the train mile cost, it is not correct from a practicable standpoint, as the expense is of such a character that the C. & E. I. could not save 10% of it if the E., J. & E. trains were to be taken off entirely.

The E., J. & E. is paying an amount equal to 50% of the entire maintenance expense of the Chicago Division allocated to freight service, although its train mileage is only about one-third of the C. & E. I., and this would indicate that the profit to them is greater than the 11% referred to above, arrived at according to their formula for determining cost per E., J. & E. train mile.

A flat rate of $1.50 per train mile or a rate that would give them an average of that rate on the basis of the present average train tonnages, would give them a profit based on their own cost figures ($1.14 per train mile) of 36 cents per train mile or 31%, which is a considerably higher operating profit than they realize from their own service.

A flat rate would be preferable, but if it is felt necessary to put in a rate on the basis of a limited tonnage to take care of any radical increase in the average train tonnage that may occur in the future, the rate should not be over $1.18 per train mile per 1,800 ton train.

Yours very truly,

(Sgd.) P. L. FISHER,
General Auditor.

Memo:
N. Y. 12/20/20.

Judge Gary says O. K. to offer C. & E. I. 1 cent per ton in addition to regular trackage rate equal to an increase of about $50,000 per year.

See Memo, date April 12, 1921.

AFB.

(Contract File 010A)

APRIL 12, 1921.

Memorandum

In an interview with Mr. W. J. Jackson, President of the C. & E. I. R. R. in my office today, April 12th, Mr. Jackson insisted that the new C. & E. I. Co., which bought the property at Receiver's Sale, could not continue the present contract with the E. J. & E. for trackage over the C. & E. I., that the increased cost of labor and material would necessitate their charging a higher trackage charge than now being paid on the contract, which is $1.00 per train mile for 1,800 tons, and a proportionate rate for all freight hauled in our trains in excess of 1,800 tons which on last year's performance would give to the C. & E. I. Road $1.29 per train mile for all trains handled over their line loaded and empty.

I called Mr. Jackson's attention to our having made previous contracts with their Company—first at 50¢ per train mile which they threatened to cancel and which was modified by agreement to read 75¢ train mile. This contract ran for sometime but had not expired when they came in and said they would cancel the same if we did not pay them $1.00 per train mile, so the contract was modified to read $1.00 per train mile, and before the expiration of the contract they threatened to break it unless we would pay them a proportion rate on all tonnage over 1,800 tons per train, which brought the rate up to $1.29 per train mile, and this contract was again modified. The present contract has many years to run, but, of course, we realize that the new company is not obligated to carry out the contracts made by the former company.

Mr. Jackson now wants $1.75 per train mile. I told him it was preposterous, that I could help him out for the present by agreeing to write him a letter that in addition to our present contract rate, namely, $1.00 per train mile for 1,800 tons per train and a proportionate rate per ton on all freight in excess of 1,800 tons, which is the equivalent of $1.29 per train mile, that we would pay him 1¢ per ton on all freight handled in our trains over the C. & E. I., making the same effective September 1, 1920, and to remain in effect until cancelled by our Company. Mr. Jackson said that they could not accept this. I told him that was as far as I would go, if he wanted to drive us off his road, to send us a notice and we would make other arrangements. He said no, he wanted us to stay on the road, but he had to have more money, and that our earnings were good and he wanted part of them. I told him we were tired making contracts that were not carried out by his Company—if he wanted to give up $600,000

a year out of his net earnings by cancelling our contract, he could do it, and that he knew he could not reduce his own operating expenses $1.00 by having us transfer our business to some other railroad. I also told him that we are paying him over $4,500 per year for each mile of track that we use of his company, and that this $4,500 per mile was more money than he spent for the maintenance of his road bed between Chicago Heights and Terre Haute, and our trackage paid all of his maintenance expenses and that he had something that was unusually good in this contract. At the conclusion of our interview Mr. Jackson said let the matter rest as at present—that he did not want to lose our trackage and felt he had to have more money and he would again see me.

I discussed this matter with Judge Gary in his office December 20, 1920, and he was agreeable to my offer of an additional payment of 1¢ per ton.

Memo.

Judge Gary said in his office 4/21/21: Get Option for a contract for trackage over C. T. H. & S. E. Ry., pay for option. Have K. K. Knapp draw it and then you will be in position to talk to C. & E. I. R. R.

AFB.

(Contract File 010 A)

CHICAGO AND EASTER' ILLINOIS RAILROAD.
OFFICE OF RECEIVER.
Chicago, April 13, 1921.

Personal.

DEAR MR. BANKS: Referring to our conversation yesterday afternoon, with reference to trackage paid by the Elgin, Joliet & Eastern for movement of its trains over the Chicago & Eastern Illinois Railroad, at which time I explained to you how necessary it was that we receive some additional rental:

My request for additional rental is, as you know, based on our extremely high operating costs, both for labor and material, over which we have not control. Our expenses today are over 100% more than they were during the pre-war period. Notwithstanding the fact that we have curtailed our forces approximately 30%, our operating expenses still exceed the revenues. As an example of the poor showing we are making: In February, which is the last month for which we have returns, there was a deficit of about $290,000 and if we added our fixed charges, which we are not paying, the loss would have been considerably in excess of $500,000.

I have "slept over" your proposition to allow us one cent per net ton on all freight carried in your trains, in addition to the contract charge per train mile, and I am sorry to say that I do not feel warranted in accepting your proposition.

While you do not admit it, I know you realize fully the present charge is entirely too low for a first-class, double track railroad,

fully equipped with automatic signals, and with the closest kind of supervision over train movements.

I said to you that I was willing to accept, for the time being or until the re-organized company negotiates a new contract, a trackage rate of $1.50 per train mile, retroactive to September 1, 1920. Any allowance made should be on not less than this basis and I hope you will reconsider this proposed rate as a temporary expedient or until further advised you.

In this connection, I desire to say that even with this increased trackage charge, the C. & E. I. will not be made whole, but we will be more nearly adequately compensated for the services rendered and it will be of some assistance to use.

Yours very truly,

(Sgd.) W. J. JACKSON.

Mr. A. F. BANKS,
President, E. J. & E. Ry. Co.,
Chicago, Illinois.

AFB:M
DECEMBER 7TH, 1921.

Mr. E. H. GARY.
Chairman, United States Steel Corporation,
71 Broadway, New York.

DEAR SIR: I have just returned from an interview with Mr. Jackson, Receiver of the Chicago and Eastern Illinois Railway Company. I was accompanied by Mr. Knapp. Mr. Lyford was present during the interview.

The new company which will take over the Chicago and Eastern Illinois Railway has been organized. On the 14th inst. a meeting will be held at which will be elected the permanent directors of the company.

The directors representing the old stockholders will be H. H. Porter; D. H. Mead, Manager for the Porter properties; E. W. Winter, formally President of the Brooklyn Rapid Transit Company, New York; Gordon Abbott, representing some Boston Trust Co.; W. H. McCurdy, a Manufacturer of Evansville, Indiana; G. W. Murray, representing A. W. Treck, President, Equitable Trust Company, New York.

The other directors representing the old bond-holders will be W. J. Platton of the United States Trust Company, who will be elected Chairman of the new board; Mr. Eckers, Vice Pres., Metropolitan Life Insurance Company; Mr. Pulluym, President, Immigrant Savings Bank, New York; Mr. Steadman, of the Prudential Life Insurance Co., New York; Mr. Henry Evans, New York Banker, New York; Mr. Lisman, New York Banker, New York; Mr. Melville Traylor, President, First Trust & Savings Bank, Chicago; Mr. Goverdale, a railroad expert, representing numerous bond-holders; Mr. W. J. Jackson, President.

It is possible that two of these men will not be elected directors on the 14th. If so, they will be elected in a short time.

Mr. Jackson will be President of new company and Mr. Lyford will be General Counsel. It is understood that the operating officials of the new company will be substantially the same men as are now operating the railroad.

The new company will take possession January 1, 1922.

The decree of foreclosure provides that any purchaser of the property "shall have the right for a period of twelve months after the delivery of the deed or other instrument of conveyance by the special master of the property purchased by him to elect whether or not to assume or adopt any lease or contract made by the defendant railroad company as part of the property embraced in such deed or instruments of conveyance and such purchaser or purchasers his or their successors or assigns shall be held to have adopted or assumed any lease or contract in respect of which he or they shall have failed to file written election not to assume or adopt the same with the clerk of this court within said period of twelve months or within such additional period as this court may hereafter by its order or decree permit."

Mr. Jackson was very positive in his statement that we would have to pay more money if our trackage arrangement was continued. When I referred to the fact that he had in a previous conversation mentioned $1.50 a train mile in lieu of the $1.00 per train mile provided in the present lease, he said it might be even more than $1.50.

Both Mr. Jackson and Mr. Lyford stated that they were not in a position to negotiate a new contract until after the first of January. They stated that the whole subject would have to be explained in detail to the new Board of Directors. It is expected that many other contracts will be presented to the new Board of Directors, as well as our trackage contract, for their decision as to whether they should be adopted or rejected.

We stated that the purpose of our call was to ascertain when we could take up the negotiations for the continuance of our contract and to get from them such assurances as they were able to give us as to what time would be given us to make other arrangements if the negotiations fell through. Mr. Jackson stated that he would treat us fairly but that in view of all the circumstances he could not at the present time mention any definite length of notice which they would give. Both Mr. Jackson and Mr. Lyford said that they did not think they would be in a position to take up negotiations with us until sometime well in the month of January, if then.

Last Monday, the fifth, I had an interview with Mr. Byram, President of the Chicago, Milwaukee and St. Paul Railway. Mr. Knapp accompanied me. We discussed with him the possibility of making a trackage arrangement which would give our company the right to run over the Chicago, Terre Haute and South Eastern Railway, lately taken over by the St. Paul. This road connects with the

Elgin, Joliet and Eastern Railway at Chicago Heights, practically at the same place where the Chicago and Eastern Illinois connects with the Elgin, Joliet and Eastern. I again stated to Mr. Byram, as I had at previous interview, that if we made a contract with his company we would like to make it on substantially the same terms as are embodied in our present contract with the Chicago and Eastern Illinois. I explain'd to him that we now paid the Chicago and Eastern Illinois $1.00 a train mile on double track and 75c a train mile on single track. He stated this would be entirely satisfactory to him. His company at present time has no double track.

He stated that he would be willing to enter into an option contract with us giving us the right to make a trackage contract with him at any time within two years at our election. Attached to the option contract as an exhibit would be the form of contract which he would be willing to enter into with us, this form to be according to our present ideas, substantially the same as the present Chicago and Eastern Illinois contract.

Of course, you will remember that before we could use this line of the Chicago, Milwaukee and St. Paul it would be necessary for that company to build about 3½ miles of track to reach the mines of the United States Fuel Company in Vermillion County, Indiana, and about 3½ miles of further tracks to reach the mines of the United States Fuel Company in Vermillion County, Illinois. The suggestion was that we would advance the money necessary to build these facilities; that such advances would be repaid to us with interest at six percent per annum in monthly installments; and that each monthly installment should amount to forty percent of the total amount due from us for trackage in such month.

We have in course of preparation a draft of the option and the trackage agreement with the St. Paul. As soon as these are completed I will take up the matter further with Mr. Byram and discuss the details of the contracts, in an attempt to arrive at a tentative agreement to then be submitted to you if you so desire.

We now have at Rossville on the Chicago and Eastern Illinois terminal facilities including roundhouse, machine shop, yard tracks and living quarters for our crews. If we move over to the St. Paul Road these facilities would have to be duplicated at some convenient point on that line. We could move the tracks, turn-tables, machinery, etc., at our present terminal to the new location, but, of course, the present living quarters and some other facilities would be a total loss. I am having an estimate made of the cost of building a new terminal upon the St. Paul using such salvage from our present terminal as would be available; also the cost of constructing the new tracks necessary to reach the mines from which we desire to transport coal. As soon as this estimate is completed I will forward it to you.

Mr. Knapp tells me that a new trackage contract with the St. Paul would have to have the approval of the Commerce Commission of Illinois and possibly of the Interstate Commerce Commission,

although he understands that the Interstate Commerce Commission has dismissed the application made to it for its approval of one or more somewhat similar contracts. It is his opinion also that an amendment of the Chicago and Eastern Illinois contract increasing the compensation paid by us would require the approval of the Commerce Commission of Illinois but not of the Interstate Commerce Commission.

Yours truly,

President.

(Contract File 010A)

12/21/21.

Memo.

Analysis of Trackage Paid C. & E. I. covering operation of E., J. & E. trains over C. & E. I. rails based on year 1920.

C. & E. I. Revenue per train mile on total freight business for year 1920 amounted to $6.31.

E., J. & E. paid C. & E. I. $572,509.99 covering 444,995 train miles, or an average per train mile of $1.29, which is equal to 20% of amount C. & E. I. earned on their total freight business, and I am of the opinion this is without additional expense to the C. & E. I., as it would probably be necessary that their expenditures for maintenances be practically the same without the movement of E., J. & E. trains over C. & E. I. rails, due to the fact that during year 1920 the number of E., J. & E. loaded trains over C. & E. I. rails from Rossville to Chicago Heights, a distance of 80 miles, amounted to 1,888, or an average per day of five trains.

As a further contention that there is no additional maintenance expense on account of E., J. & E. trains over C. & E. I. rails, below please find Total Mainte, Expenses per Mile of Road, year 1920, of other railroads in that vicinity, as well as E., J. & E. compared with C. & E. I.

C. & E. I.	$2,105.86
C., I. & L.	2,189.31
C. & A.	2,536.76
Wabash	3,204.49
E., J. & E.	2,848.05

The above indicates that C. & E. I. spent less for maintenance per mile of road than other roads that run through that same territory and bears out the contention that no additional expense is necessary due to E., J. & E. trains operating over C. & E. I. rails.

During year 1920 E., J. & E. paid C. & E. I. an average of $2,895.00 per mile of road, based on 197.72 miles, which is the number of miles of C. & E. I. road that E., J. & E. trains operate over, and is equal to $790.00 more per mile of road than C. & E. I. spent for total mainte-

nance, indicating C. & E. I. received more per mile from E., J. & E. than it cost for entire maintenance, and at the same time having the use of their road, from which additional revenue is received.

Allowing the same value per mile of main track as E., J. & E. $36,686.00, based on I. C. C. valuation as of June 30th, 1914, per advice of our Chief Engineer, which does not include C., L. S. & E. on account of exceptionally high value of that particular property, the 198 miles of C. & E. I. tracks that E., J. & E. operates over would be equal to value of $7,263,828.00, and receiving $572,509.99 from E., J. & E. for rental of same, would show a return of approximately 8% on their investment, or an amount equal to total value in approximately 12 years time.

C. & E. I. earnings for train mile on total business year 1920, was $6.31 and total operating expenses 95% of total operating revenues. Allowing 80%, or 15% less for operating expenses, it would net C. & E. I. $1.26 per train mile, or three cents less per train mile than the $1.29 paid C. & E. I. by E., J. & E.

E., J. & E. paid C. & E. I. year 1920, $572,509.99, which exceeds the total amount paid E., J. & E. Executives, General Officers and Assistants, also Division Officers and Assistants by $286,957.99, or an amount equal to one additional year's salary. From this it would appear that the C. & E. I. would more than likely be able to pay the salaries of their Executives, General Officers, etc., out of amount paid them by E., J. & E. and still have something left over.

C. & E. I. received $4,000,000.00 per annum, for rental of their railroad during Federal control, as per annual report year 1920, which was based on average operating income for three test years ended June 30th, 1917. The $4,000,000.00 is equal to a return of total investment of 4.80%, while the E., J. & E. pays C. & E. I. an amount equal to 8% for the mileage used by E., J. & E., based on valuation of $36,686.00 per mile (see last paragraph on first sheet for explanation of this figure). The amount paid C. & E. I. by E., J. & E. $572,509.99 for year 1920, is approximately 1/7th of their total income based on rental paid by Government. E., J. & E. paid C. & E. I. $572,509.99 during year 1920, and the C. & E. I. would be able to purchase, with this amount 13 Mikado locomotives similar to Mikado locomotives purchased by E., J. & E. in the early part of year 1918, at $45,000.00 each, or 173 seventy-ton cars similar to cars recently built by E. J. & E. at an approximate cost of $3,300.00 each. The above equipment would be suitable for C. & E. I. business as coal amounted to 57% of their total business handled for year 1920.

The E., J. & E. total Maintenance of Equipment expenses for year 1920 was $5,551,396.00, or an average per month of $462,616.00. The amount paid C. & E. I. year 1920, $572,510.00, exceeds E., J. & E. average monthly Maintenance of Equipment expenses by approximately $110,000.00.

C. & E. I. monthly report of Revenues and Expenses to Interstate Commerce Commissions for period January to September 1921, shows

Net Railway Operating Income $1,073,575.00. E., J. & E. paid C. & E. I. during same period $252,046.00, or ¼th of their total Net Railway Operating Income.

As a further analysis to determine what the trackage paid C. & E. I. means in the way of revenue to C. & E. I., the month of January 1921 C. & E. I. Net Railway Operating Income was $46,980.00, while the E., J. & E. paid C. & E. I. in January 1921 $52,593.00, or $5,613.00 more than their total Net Railway Operating Income, and if C. & E. I. had not received amount from E., J. & E. their Net Railway Operating Income would have shown a deficit of approximately $99,000.00

G. W. W.

CHICAGO, Dec. 21, 1921.

COAL—COMMERCIAL

	Rate	C. & E. L., proportion	E., J. & E., proportion
Clinton to Gary	$1.78 net ton	$1.046	$.734
" " Joliet	1.78 " "	1.169	.611
Westville to Gary	1.735 " "	.996	.739
" " Joliet	1.72	1.124	.596

STONE

Fairmount to Gary	$.965 net ton		
" " So. Chgo.			
" " Joliet			

No through rate via C. & E. I. and E., J. & E. nor provision for division—but if divided on same basis as Commercial Coal the divisions would be as follows:

	Rate	C. & E. I., proportion	E. J. & E., proportion
Fairmount to Gary	$.965 net ton	.561	.404
" " So. Chgo.	.965 " "	.561	.404
" " Joliet	.965 " "	.632	.333

Brief Covering Renewal of Contract With C. & E. I. Ry. or New Contract With C., M. & St. P. Ry.

The last trackage contract between the C., L. S. & E. Ry. and C. & E. I. Ry. was made as of February 1, 1909, for a period of 50 years, expiring January 31, 1959.

The contract provides that the C., L. S. & E. Ry. shall pay $1 per train mile for each train of empty cars and $1 per train mile for each loaded train of 1,800 tons lading or less with pro rata increase for all lading in excess of 1,800 tons per train, which rates apply to that part of the C. & E. I. Ry. over which the C., L. S. & E. Ry. actually operates. The contract also provides for a rate of 75 cents per train mile (under same limitations as to tonnage as the $1 rate) over cer-

tain parts of the C. & E. I Ry. which has single maind track only but the C., L. S. & E. Ry. has not operated over said parts.

During the twelve years the contract has been in effect the C., L. S. & E. Ry. has paid the C. & E. I. Ry. trackage rental as follows:

Aggregate for 12 years—1909–1920 (Exhibit A), $5,902,020.97.

Average per year for 12 years (Exhibit A), $491,835.08.

The C. & E. I. Ry. are demanding an increase in the base rate of $1 per train mile and while they have not specifically named a rate on which they would be willing to make a new contract they have presented figures which they claim would entitle them to a rate as high as $2.235 per train mile (Exhibit D).

The following figures will show the additional amount it will cost the C., L. S. & E. Ry. if new base rates of $1.25, $1.50, or $1.75, respectively, are agreed upon:

	$1.25 per train mile	$1.50 per train mile	$1.75 per train mile
Increased cost per year (Exhibit A)	$123,000.00	$246,000.00	$369,000.00
Total additional amount that would be paid to end of contract in 1959, 38 years	$4,674,000.00	$9,348,000.00	$14,022,000.00

If we refuse to grant an increase and the C. & E. I. Ry. should refuse to carry on the old contract (which it could do, as the old company which made the contract has lost the property through foreclosure and a new C. & E. I. Ry. Co. is now in control), it would be necessary for us to allow the C. & E. I. to haul our traffic in their own trains from mines and quarries to Chicago Heights and there deliver to our company and continue this service over the C. & E. I. Ry. for at least six months until the C., M. & St. P. Ry. could make necessary track connections to mines and quarries and we could install the necessary terminals on the St. Paul Road.

During the six months' operation on an interline basis with the C. & E. I. Ry. we would lose through a division of the revenue with that road (Exhibit B)	$310,000.00
We would also lose through the abandment of certain terminals we now own at the mines and Rossiville (Exhibit C)	$225,000.00
Loss sustained by cancellation of present contract	$535,000.00

(**NOTE.—A new investment of $265,000 will be necessary which is not included here as a loss as it should be amortized over life of new contract.)

Under a new contract with C., M. & St. P. Ry. with a base rate of 75 cents per train mile of 1,800 tons and pro-rata for excess over 1,800 tons we would recover the above loss of $535,000 at the rate of $123,000.00 per year compared with our present contract with the C. & E. I. Ry. or a little over 4 years in which to recover the entire loss of $535,000.00 provided the C., M. & St. P. Ry. maintained only a single track railway during that length of time. If they increase their facilities to double track and raise the base rate to $1.00 per train mile we would, of course, cease to have any advantage over our

present contract with the C. & E. I. RR. and our advantage would only lie in avoiding the payment of an increased rate to the C. & E. I. RR. ranging anywhere from $50,000 to $389,000 per year.

If the C., M. & St. P. Ry. single track facilities should prove adequate for our operations during the entire period of the contract there arises the question of whether we would be justified in continuing with the C. & E. I. R. R. in view of the apparent saving to be made by the change of approximately $4,139,000, as follows:

Reduction in rental at 75¢ per train mile as compared with $1.00 per train mile—$123,000 per year for 38 years		$4,674,000.00
Less 6 mo. loss of earnings	$310,000	
" Terminals abandoned at Rossville and mines	225,000	
		535,000.00
Net saving in 38 years		$4,139,000.00

This saving would, of course, be increased by any additional amount, if any, it would be necessary to pay the C. & E. I. R. R. in order to continue business over its line.

The St. Paul people advise that it is their expectation to, in the near future, double track their road over that portion that we would operate. We would then pay to the St. Paul the same rate we are now paying to the C. & E. I. Road.

All of the above is predicated on the assumption that the C., M. & St. P. Ry. will be able, if necessary under the Transportation Act 1920, to convince the I. C. C. that present or future public convenience and necessity require or will require the extension of its line of railroad to the mines and quarries.

If we ignore the possibility of a contract with the C., M. & St. P. Ry. at a lesser rate or even at an equal rate and consider only the question of whether the C. & E. I. Ry. is entitled to an increase under present conditions we have only the one fact of increased expenses to guide us.

There is no question but what the contract was originally very profitable, to the C. & E. I. Ry. and their distribution of the $1 per train mile rental received so indicated as they credited it as follows:

To Maintenance of W. & S	25%
To Transportation Expenses	15%
To Rentals (which was supposed to represent the net revenue over Maintenance and Transportation expenses	60%

If the distribution represented approximately the actual result at the beginning of the contract, it was a very favorable contract and gave them a large profit. They have never changed the distribution although they claim an increase of 118% in Maintenance expenses and 134% in Transportation expenses for 1920 compared with 1917. Even with these increases the rental undoubtedly shows a profit

Maintenance of Way, 25% plus 116%	54%
Trans. Expenses, 15% plus 134%	35%
	89%
Base rental rate	100%
Balance of rental	11%

and the real profit is more than is shown on account of arbitrarily allocating a portion of the Transportation expenses against the rental received from us. While this allocation may not be criticised from a theoretical distribution of expenses it is misleading from an actual operating standpoint as the C. & E. I. Ry. could not save a dollar of such Transportation expenses as they allocated against our rental if we were to withdraw our trains from their tracks. It is all of such a character as must be retained for their own trains.

In the matter of maintenance our train mileage represents probably about 20% of the entire train mileage over that part of the road which we use and while it is certain that they could not save 20% of their maintenance of these particular tracks through the withdrawal of our trains they undoubtedly could save something on account thereof.

The C. & E. I. R. R. spent about $3,400 per mile of road operated for maintenance in 1920 and we paid them about $2,900 per mile of road over which we operated and our operation was only about 20% of the total operations over that portion of the road. Reducing these figures to per mile of track instead of per mile of road basis, the figures, as near as we can determine from data we have at hand are $2,100 spent by the C. & E. I. R. R., and $1,500 paid by us, our $1,500 again covering only 20% of the total operation over those tracks. Even if we concede that they would be able to cut down their maintenance in proportion to our use of their tracks we estimate their saving would not be over $200,000 per year.

A 10% increase in the base rate of $1.00 per train mile would, on past experience, give them additional rental of about $50,000 per year and insure them a greater profit than they enjoy on business handled in their own trains. Their operating expense rate to Revenue was 95% in 1920 and 92% in 1919. There is no way of stating the exact return such a rental would net them but in our opinion there is no question that it is in excess of 6% per annum based on the value of the property and our approximately 20% use of same.

C. & E. I. value of property which we use		$16,000,000
Our train mileage pro-rata, use of same about 20%		3,200,000
Average rental per year	$491,000	
Our proportion of Maintenance	*$200,000	
Our proportion of Transportations	85,000	
	285,000	
Balance (6.44% of $3,200,000)		206,000

*We contend, however, that none of this could be saved to C. & E. I. R. R. if we withdrew our trains.

The C. & E. I. R. R. have submitted no figures that indicate that they know approximately what net return they derive from our rental but have simply pointed out the large increase in their expenses, and from this showing claimed they were entitled to and must have more rental.

We cannot agree to their proposition that they should have a return of 3% on $16,000,000 plus our train mileage pro-rata of the

cost of maintenance and certain transportation expenses. The 3% is one-half of 6% on the entire value of that part of their road which we use and as our train mileage proportion will not exceed 25% of the total and probably does not average over 20% and we are excluded from handling any freight except coal and stone and these commodities for only U. S. Steel Corporation Subsidiaries and excluded entirely from handling local business we could not possibly be expected to pay a return based on one-half of 6% on the total value of that part of their road:

A railroad (for handling freight only and without rolling stock) could be buildt for one-half of $16,000,000 that would take care of our entire business now handled over the C. & E. I. Ry. and on which we would not be restricted to Corporation coal and stone only but could handle all classes of freight for the Corporation and for outside interests also.

EXHIBIT B

Revenues and Expenses covering movement of coal and stone from Westville, Clinton, and Fairmount to South Chicago, Gary, and Joliet, based on period July to November, 1921 operations

	Revenues	Expenses	Net
E. J. & E. Operations	$1,582,689.21	$821,798.23	$760,890.98
C. & E. I. Operations to Chgo. Hts	632,925.87	131,187.42	501,738.45
E. J. & E. Chgo. Hts. to Destination			
	949,763.34	690,610.81	259,152.53
Loss to E. J. & E. if handled by C. & E. I. to Chgo. Hts. (for 5 months)			259,152.53
Average Loss to E. J. & E. per month			$51,830.51
Loss to E. J. & E. 6 months			310,983.06

(President's File #519)

FEBRUARY 6, 1922.

Memorandum

The attached memorandum discussed by Mr. Byram, Mr. P. L. Fisher, and Mr. Banks in Judge Gary's ante-room in New York, January 26th, 1922.

Mr. Byram objected to the small minimum in the proposed draft of trackage agreement and wanted a minimum of $100,000.00 per year. Mr. Banks stated he would accept and the contract would so provide.

Mr. Banks stated that the estimated cost of reaching the mines and quarries of the Steel Corporation in Vermillion Counties, Indiana and Illinois, as estimated by the C., M. & St. P., would be $645,000.00 and he was willing to cut out of the proposed contract the building by the St. Paul to the Deering and Miami coal mines. Mr. Byram said that would be all right, that the St. Paul would then be providing the same facilities to the Corporation mines and quarries as

were provided by the C. & E. I. Mr. Banks stated that if, however, we wanted tracks extended to other mines than those of the Corporation and that the C., M. & St. P. were willing to build such tracks in order to obtain commercial coal, as well as coal for the Corporation, then the C., L. S. & E. would advance the money for the building of such tracks under the same terms as to its own mines.

Memorandum No. 2 was satisfactory to Mr. Byram.

Memorandum No. 3 was satisfactory to Mr. Byram with a further statement and agreement by both parties that if the C., L. S. & E. was prevented from using trackage over the Milwaukee then in that case the minimum was to cease because the traffic would move on commercial rates and commercial divisions.

Memorandum No. 4 was eliminated for the reason that Mr. Banks agreed to a minimum of $100,000.00 per year.

This memo. discussed with Mr. Byram, Mr. P. L. Fisher, and Mr. Banks in Judge Cary's ante-room, New York, January 26th, 1922 at 10:30 A. M.

Memorandum

Mr. Byram objects to the small minimum which the present draft of proposed trackage agreement provides that the Lake Shore shall pay.

Possibly his objection can be met if the Lake Shore should agree, in lieu of the payment of the minimum, to make an agreement along the following lines:

1. The Lake Shore to advance the cost of constructing such branches and spurs necessary to reach the mines and quarries mentioned in the present draft as the Lake Shore requests to be built.

2. The Lake Shore to be repaid the amount of its advances at the rate of 40% of the total trackage which the Lake Shore pays each month.

3. If the Lake Shore is prevented in any way from using its trackage rights then the Milwaukee Company is thereafter to pay to the Lake Shore Company 40% of the divisions which it receives in connection with the E., J. & E. on traffic originating at the mines and quarries to which branches, spurs, etc., are built in accordance with contract and which traffic moves to the Illinois Steel Company and allied companies until the Lake Shore is paid the full amount for its advances.

4. The contract not to provide for the payment by the Lake Shore Company of any minimum.

5. All of the above on the condition that the title to such branches, spurs, etc., or lien upon such branches and spurs shall be handled in such a way as to secure the interest of the Lake Shore Company as against mortgages or other claims against the Terre Haute Company or the St. Paul Company. The mortgage of the Terre Haute line to be examined at once.

(V–P File No. 519)

AFB:M
FEBRUARY 6, 1922.

Mr. E. H. GARY,
Chairman United States Steel Corporation,
71 Broadway, New York.

DEAR SIR: Referring to proposed trackage contract with the Chicago, Terre Haute and South Eastern Railroad operated by the Chicago, Milwaukee, and St. Paul Road.

Mr. Knapp and myself have had several conferences with Mr. Byram, President of the St. Paul, also one conference with Mr. Byram in your office. Mr. Byram, as you know, stated he was willing to enter into such trackage contract on the basis of 75¢ per train mile and $1.00 per train mile over such portion of his line as was double tracked. These conferences began in November 1921. After numerous discussions the third and last draft of contract together with the draft of option for a contract was submitted to Mr. Byram, after all the details had been worked out by Mr. Knapp and Mr. Dynes, Counsel for the St. Paul Road. The final draft was submitted to Mr. Byram by messenger Tuesday morning, January 31st, as he was leaving for Washington on the noon train.

In the early part of December Mr. Byram stated that they would probably make some arrangements to take over the Chicago, Milwaukee, and Gary Road and on December 14th, his operating and engineering officials spent the day in Joliet looking over our terminals to see how their trains could be handled in the event they would take over the Chicago, Milwaukee, and Gary Road. Our operating officials, accompanied by Mr. Rogers, made a trip the following day over the Chicago, Terre Haute, and South Eastern Road to see how we could operate our trains in the event of our making a contract for trackage rights over their line. At the last interview we had with Mr. Byram in December he stated that they would take over the operation of the Chicago, Milwaukee, and Gary on January 1st and was somewhat in doubt as to whether we could afford them prompt movement of their trains through our terminals at Joliet. We assured him that we could give his trains prompt movement and that there would be no discrimination whatever against any of his trains. Early in January the Chicago, Milwaukee, and Gary made application to the Interstate Commerce Commission for authority to build a railroad between Aurora and Joliet at a cost of $2,700,000.00. I do not know whether this application has been granted.

Mr. Knapp and myself had an interview with Mr. Byram and his Attorney Mr. Dynes on Monday January 30th, at which Mr. Byram stated that all details for the contract for trackage had been agreed upon between himself and myself and it was a matter for the Lawyers to put in proper shape. These matters were outlined

in detail to Mr. Knapp and Mr. Dynes with instructions to complete the final draft of contract. The contract was completed and delivered to Mr. Byram the following morning as Mr. Byram was leaving for Washington. Just as Mr. Knapp and I were leaving the office Mr. Bram said—here is a proposed contract between the Chicago, Milwaukee, and Gary and the Elgin, Joliet, and Eastern in substantially the same form as the proposed contract between the Chicago, Lake Shore, and Eastern and the Chicago, Terre Haute, and South Eastern; this is what we would like—wish you would look it over.

On Mr. Byram's return from Washington, Friday, February 3rd, Mr. Knapp and I called on him at his office, meeting with Mr. Dynes, his Attorney, and his Chief Engineer. Mr. Byram stated that his Executive Committee had authorized him to sign the contract substantially as drawn but he could not get the approval of his entire board probably for another month or possibly two months. He said he thought one small change should be made merely for sake of clearness. I told him his signature would be satisfactory and he could give us a copy of the approval of his board at a later date. Mr. Byram then stated the signing of the contract was predicated on our signing an option with the Chicago, Milwaukee, and Gary effective at the same time. I told him that Mr. Knapp and I had not had an opportunity to fully discuss or analyze his proposed contract since it had been delivered to me. We, however, discussed the contract then and there at the meeting. I called Mr. Byram's attention to the fact that he was asking for equal rights on our road to handle all classes of business and that the new contract he proposed for the Chicago, Milwaukee, and Gary would give that company the right to use our line without any restriction except between Joliet and Aurora and with the further exception that the Chicago, Milwaukee, and Gary would not have the use of our industry tracks but they would have the right to deliver and receive cars from all connections east of Joliet or west of Aurora, thus using our line Aurora to Joliet to form a belt line in connection with the Michigan Central at Joliet, which parallels our road—Joliet to its eastern terminus, Porter, Indiana, making a belt line enabling them to interchange business between all roads in competition with the E., J. & E.; that this was unfair and would destroy our interchange business; that the Chicago, Terre Haute, and South Eastern was only granting us trackage rights to handle two commodities—coal and stone—and then only when consigned to industries of the Corporation but not when consigned to others or for commercial purposes. Mr. Byram stated that what they wanted was to be able to take their own business originating on their own line or connections and deliver it to whoever they pleased east of Joliet and that while it was not their intention to go into the transfer business the contract proposed by him would not prevent their so doing. He then wanted to know when I expected to get away. I told him I had abandoned my trip to South America. He said he was leaving the next morning for

the Pacific coast and would not return until about March first. I suggested that he think the matter over further in the meantime and that I would do likewise.

Personally I feel that Mr. Byram believes that we will not make use of the proposed option to operate over his line, that the C. & E. I. will not allow us to leave their road, but that if he is to give us an option, he wants something in return, and that is the right for the unrestricted use of our road between Joliet and Aurora. The present contract between the Chicago, Milwaukee, and Gary and the Elgin, Joliet, and Eastern expires in 1930. The Chicago, Milwaukee, and Gary now owes us $41,190.32. We have been unable to get any money out of them for the use of our tracks since May 1921.

The Chicago, Indiana, and Southern, now part of the New York Central System, connects with our line at Hartsdale, extends to Danville, Illinois, and there connects with the Big Four, which is owned by the New York Central. The Big Four serves the Little Vermillion Mine owned by the United States Fuel Company and by the building of about the same number of miles of track as the Chicago, Terre Haute, and South Eastern would have to build, they could connect up with all of our quarries and mines in Vermillion Counties, Indiana and Illinois, and afford us practically as short a haul and as easy a grade as we would have over the Chicago, Terre Haute, and South Eastern, and I believe they would be somewhat anxious to give us trackage rights over these two roads, particularly if the New York Central Lines could be assured of a continued liberal share of the coal they are now hauling from Lynch mines on the L. & N. Road to the Chicago territory. This coal is now being apportioned between the New York Central and the Monon.

The Pennsylvania has the shortest line between Louisville and Chicago but is not receiving any of this traffic. The tonnage from the Lynch mines is now averaging 30,000 tons per week—80 cars per day via the Big Four and 20 cars per day via the Monon. Mr. Clingerman expects to increase the capacity of the Lynch mines to 40,000 tons per week as early as possible. My suggestion is that we see Mr. Smith, President of the New York Central, and feel him out on the subject of our using the Chicago, Indiana, and Southern and the Big Four under a trackage agreement similar to that proposed for the use of the Chicago, Terre Haute, and South Eastern.

Yours truly,

President.

(Contract File 010A)

AFB–G

JUNE 28TH, 1922.

MY DEAR ED: When you were last in Chicago I believe you asked me the question as to the earnings in dollars and cents the Chicago & Eastern Illinois Railroad received on the business that it handled for subsidiary companies of the U. S. Steel Corporation.

During the year 1921 the C. & E. I. earnings on business from the various companies were as follows:

American Bridge Company	$14,994.00
American Sheet & Tin Plate Co	383,166.00
American Steel & Wire Company	437,001.00
Carnegie Steel Company	2,677.00
Illinois Steel Company	263,044.00
National Tube Company	47,212.00
Tennessee Coal & Iron Company	990.00
H. C. Frick Coke Company	2.00
Lorain Steel Company	481.00
Minnesota Steel Company	743.00
Universal Portland Cement Company	179,693.00
	1,330,003.00

This is exclusive of the earnings of the C. & E. I. R. R. paid by the E., J. & E. for trackage rights over their road. Our average yearly payments for trackage since the contract was made in 1909 has been approximately $600,000.00 a year.

The Steel Corporation through its various subsidiary companies contribute quite a bit to the gross earnings of the C. & E. I. Road, and I think you will quite agree with me that the Corporation's traffic is very desirable business, and it is in my mind a worth while saving, this tonnage and earnings to the C. & E. I. R. R. By far the larger party of this tonnage is competitive.

Yours truly,

A. F. BANKS.

Mr. E. SHEARSON,
Shearson, Hammill & Co.,
71 Broadway, New York.

(Contract File 010 A)

SHEARSON, HAMMILL & CO.,
71 Broadway, New York, June 29th, 1922.

(Private.)
A. F. BANKS, Esq.,
208 South LaSalle St.,
Chicago, Illinois.

DEAR ALECK: I am very grateful to you for the information contained in your letter of the 28th, just received.

If you don't come to a settlement with Jackson prior to my return, don't "upset the apple cart", I shall come out to Chicago shortly after my return, sometime the latter part of July, and see if we cannot have a general roundup.

With best wishes.

Sincerely yours,

(Sgd.) ED.

(Contract File 010 A)

AFB:M
OCTOBER 6, 1922.

Mr. E. H. GARY,
Chairman, United States Steel Corporation,
71 Broadway, New York.

DEAR SIR: Referring to the conversation between Mr. Jackson, President of the Chicago and Eastern Illinois, and Mr. Shearson, yourself, and myself, in your office recently, I had another interview today in my office with Mr. Jackson and Mr. Shearson.

Mr. Jackson claims that the increased cost of Maintenance of Way over that portion of his road used by the E., J. & E. increased in 1921 over the year 1909, when the contract was originally made, 174.8%, that section labor in 1921 is 123% greater than in 1909, that bridge carpenters, painters, and other workers' wages have increased 110%, that the price of rails has increased 35%, angle bars 85%, spikes 76½%, bolts 81.8%, stone ballast 135%, gravel 336%, ties 118%, and all other material entering into the maintenance proportionately. That the rates on coal from the Clinton field to Joliet, South Chicago, and Gary are 110% higher than in 1909. That during the period from 1909 to date the E., J. & E. has not had to bear any of this increased cost of the maintenance of tracks of the C., & E. I., which they use under the trackage agreement, that we have had the benefit of the increase in rates of freight and that he and Mr. Shearson can not recommend to their Board the continuance of the present contract.

The statements made by Mr. Jackson of his increased cost are substantially correct, but I believe that when we offered to pay to the C. & E. I. Railroad the rates prescribed in the present contract and a further additional payment of 1½¢ per ton on all freight we carried in our trains over their tracks, that we were making a perfectly fair offer. Mr. Shearson and Mr. Jackson are unwilling to recommend the acceptance of my offer, but are willing and have made the proposition to me for our acceptance that they will continue the present contract until January 31, 1959; the full terms of the contract provided we will pay them as rental in addition to the mileage prescribed in the contract a rate or price of 2¢ per ton on all freight handled in our trains over their road. This will mean an increase of a little less than twenty percent over our present contract.

I would dislike very much to see the present contract terminated and attempt to make a new contract with the Chicago, Milwaukee and St. Paul or even a new contract with the C. & E. I. Railroad and while I believe that our offer of 1½¢ per ton in addition to the trackage rental is fair rather than make the change I would recommend that we make settlement with them and at the earliest possible date on the basis of an increase of 2¢ per ton. If my recommendation is acceptable to you and you approve it, we will simply pass

a letter in form as per the enclosed, changing the date to fit the situation, Mr. Knapp having approved of this form of letter. By handling it in this way it is not necessary to submit the matter to the Interstate Commerce Commission. The order of the court being that unless the new purchasers of the C. & E. I. serve notice on or prior to midnight of December 31, 1922, that they will not assume the contracts made by the receiver or prior thereto, that all of such contracts remain in effect and binding upon the new company. It is thought by Mr. Knapp as well as by Mr. Jackson and his legal advisors, that that is the proper way in which to handle the matter.

May I not have your prompt advice, and oblige.

Yours truly,

President.

(President's File No. C-010-A)

UNITED STATES STEEL CORPORATION.
New York, October 11th, 1922.

DEAR SIR: In view of your letter dated October 6th instant, concerning contract between the Chicago & Eastern Illinois and the Elgin, Joliet & Eastern Railway Company, and your recommendation contained therein, I favor and approve increasing the compensation by 2¢ per ton, as you suggest, on the conditions and terms expressed.

Very truly yours,

(Signed) E. H. GARY,
Chairman.

MR. A. F. BANKS,
President, Elgin, Joliet & Eastern Ry. Co.,
Chicago, Illinois.

[Copy.]

OCTOBER 18TH, 1922.

MR. W. J. JACKSON,
President of the Chicago & Eastern
Illinois Railway Company,
Chicago, Illinois.

DEAR SIR: If the Chicago & Eastern Illinois Railway Company will assume and adopt the agreement dated February 1, 1909, and expiring January 31, 1959, by which the Chicago & Eastern Illinois Railroad Company granted trackage rights to the Chicago, Lake Shore & Eastern Railway Company, then the said Chicago, Lake Shore & Eastern Railway Company and its lessee, the Elgin, Joliet & Eastern Railway Company (so long as said lease exists) will agree to pay to the said Chicago & Eastern Illinois Railway Company, in addition to the compensation as provided in said agreement, the further sum of two cents (2¢) per ton of two thousand (2,000) pounds on all freight handled by them, or either of them, over the railroad described in said agreement from July 1st, 1922, until the expiration of said agreement on January 31, 1959.

I write this in behalf of both the Chicago, Lake Shore & Eastern Railway Company and the Elgin, Joliet & Eastern Railway Company.

An acceptance of this letter by you will be authority for the making of bills in accordance with the above by your company and the payment of such bills by our companies.

Yours very truly,

President of Chicago, Lake Shore & Eastern Railway Company and President of Elgin, Joliet & Eastern Railway Company.

CHICAGO AND EASTERN ILLINOIS RAILWAY COMPANY,
OFFICE OF THE PRESIDENT,
Chicago, Oct. 20, 1922.

Mr. A. F. BANKS,
President, Chicago, Lake Shore & Eastern and Elgin, Joliet & Eastern Railway Companies,
Chicago, Illinois.

DEAR SIR: In behalf of the Chicago and Eastern Illinois Railway Company, I accept your proposition stated in your letter of October 18, 1922, and do hereby assume and adopt the agreement by which the Chicago and Eastern Illinois Railroad Company granted trackage rights to the Chicago, Lake Shore & Eastern Railway Company, therein mentioned.

Yours very truly,

(Signed) W. J JACKSON.

[Copy.]
Original on file with Sec'y of E., J. & E.
A. F. B.

(President's File No. C-010-A)

UNITED STATES STEEL CORPORATION,
New York, October 26, 1922.

DEAR SIR: I have your letter of October 21st instant and the attached correspondence with Mr. Jackson, President of the Chicago & Eastern Illinois Railway. I believe that the Directors of the Elgin, Joliet & Eastern Railway Company and the Chicago, Lake Shore & Eastern Railway Company should respectively approve and ratify the arrangements made.

Yours truly,

(Signed) E. H. GARY,
Chairman.

Mr. A. F. BANKS,
President, Elgin, Joliet and Eastern Ry. Co.,
Chicago, Illinois.

[Copy.]

214 *Government's Exhibit D*

[File endorsement omitted.]

IN RE: APPROPRIATIONS AND EXPENDITURES

(President's File No. 778)

UNITED STATES STEEL CORPORATION,
New York, New York, May 1st, 1903.

DEAR SIR: Enclosed please find copy of resolution lately adopted by the Finance Committee of this Corporation. In particular, what is desired, is that immediately after you have entered into important contracts for Machinery, Construction, etc., under the appropriations recently granted your Company, you forward to me copies of such contracts, and any other information pertaining thereto that would be of interest to the Committee, in order that I may submit it to the Committee, and keep them fully advised from time to time of the action of the officials of subsidiary Companies concerning important maters in connection with the expenditure of money, in which they are so deeply interested.

Would like you to give this as prompt attention as possible, at present letting me have copies of such contracts as have been given out to date, and further, if several bids have been received by you upon any contract work, please furnish me with information regarding these various bids.

Yours very truly,

(Signed) C. M. SCHWAB,
President.

Mr. A. F. BANKS,
President, Elgin, Joliet & Eastern R. R. Co.,
Chicago, Ill.

Encl.
[Copy.]

Resolved: That it is the sense of this Committee, with reference to the expenditures heretofore decided upon, and hereafter to be decided upon, for improvements, extensions, and additions to the plants and properties in which this Corporation is interested, that this Committee should keep sufficiently informed to enable it to act in an advisory capacity as stockholder; and to this end, all important contracts should be promptly submitted to this Committee, or representative of the corporation designated by this Committee, for consideration and advice; and further, that this Committee, or such representatives, should at all times be fully informed, and have for the inspection of this Committee complete records of all such contracts, and work done, and payments made thereunder.

[Copy.]

(President's File No. 778)

UNITED STATES STEEL CORPORATION,
New York, New York, May 12, 1903.

Mr. A. F. BANKS,
President, Elgin, Joliet & Eastern Railway Company,
Chicago, Ill.

DEAR SIR: Referring to Mr. Schwab's letter to you of May 1st, enclosing copy of resolution of the Finance Committee, in reference to contracts entered into for improvement work authorized under recent appropriations. The President directs me to request that you have the copies of the contracts referred to forwarded direct to this office, as he desires that I prepare schedules and summaries of the same for his uses.

Yours very truly,

(Signed) W. J. FILBERT,
Comptroller.

R.
[Copy.]

(President's File No. 778)

UNITED STATES STEEL CORPORATION,
New York, New York, May 18, 1903.

SMR:
These for future use. A. F. B. 0270.

Mr. A. F. BANKS,
President, Elgin, Joliet & Eastern Ry. Co.,
Chicago, Lake Shore & Eastern Ry. Co., Chicago, Ill.

DEAR SIR: Referring to my letter of May 12, 1903, in regard to Copies of contracts for authorized improvement work. As it will greatly facilitate the handling of these contracts in this office, I will be obliged to you if you will have the following information shown on each contract before sending same to me;

Appropriation Blank, Date _____
" " Number_____
" " Total Amount $_____
For_____Works.

We find this information necessary to insure the correct showing of the contracts against the proper appropriations.

Yours very truly,

(Signed) W. J. FILBERT,
Comptroller.

Memo.
See E. J. & E. file 778.
Contracts to go to Carse—H. R. C.
[Copy.]

(Copy of Original—Auditor's File 97–A General File)

UNITED STATES STEEL CORPORATION,
EMPIRE BUILDING, NEW YORK,
New York, October 19th, 1903.

Mr. F. W. SUTTON,
Auditor, E., J. & E. Ry. Co., C., L. S. & E. Ry. Co.,
Chicago, Ill.

DEAR SIR: We find certain appropriations or parts of appropriations authorized by United States Stetel Corporation are sometimes chargeable to accounts other than to Property and Improvement accounts. As it is necessary for our requirements that expenditures on such Miscellaneous accounts should be reported to this office we enclose sample form of statement to be used for this purpose.

If you have any expenditures covered by such appropriations please have this statement rendered as one of your regular reports.

Respectfully,

(Signed) W. J. FILBERT,
Comptroller.

CAS–H.

(President's File No. 1545)

UNITED STATES STEEL CORPORATION,
71 Broadway, Empire Bldg., New York, July 3rd, 1912.
Circular letter.

Mr. A. F. BANKS,
President, Elgin, Joliet & Eastern Ry.,
Chicago, Ill.

DEAR SIR: In a recent communication from our Chairman, it was suggested that all purchases or contracts in amounts of $1,000.00 and over, whether made under Corporation or Company Appropriations, be reported to this office.

Such information has been sent to Mr. John B. Carse, covering purchases or contracts in amounts over $500.00 under Corporation Appropriations, and it is now desired that report be made to Mr. Carse of all purchase or contracts in amounts over $500.00, whether under Corporation or Company Appropriations.

Yours very truly,

(Signed) J. A. FARRELL,
President.

(President's File No. 1492)

UNITED STATES STEEL CORPORATION,
71 Broadway, New York, New York, November 4th, 1912.

Office of the President.

Mr. A. F. BANKS,
President, Elgin, Joliet and Eastern Railway Company,
Chicago, Illinois.

DEAR SIR: Replying to yours of the 1st inst. regarding circular letter to all presidents dated October 30th:

In sending out general letters, we appreciate that same are not always directly applicable to some companies, but, in order that all of our officials may be in an intelligent position respecting matters of policy, and our wishes and ideas on many subjects that may not have been taken up with each president, individually, it is our custom to send these circular letters to all, without exception, and in doing so, it is, of course, not expected that officials not expressly interested will feel that such letters are especially intended for them.

Yours very truly,

(Signed) J. A. FARRELL.
President.

[Copy.]

(President's File No. 1545)

UNITED STATES STEEL CORPORATION,
71 Broadway, New York, June 5th, 1914.
(circular letter to all Presidents.)

Mr. A. F. BANKS,
President, Elgin, Joliet & Eastern R. R. Co.,
Chicago, Ill.

DEAR SIR: It has been recently remarked with emphasis by members of the Finance Committee that changes are made in regard to new work which increase the total cost above appropriation without previous consideration by the Finance Committee and even without notice to this office. The rules for procedure have been heretofore stated, and the object of this letter is to call your attention to the necessity of complying rigidly with the instructions heretofore given.

Please acknowledge receipt.

Yours very truly,

(Sgd.) J. A. FARRELL.
President.

(President's File No. 1283, 1545)

OCTOBER 18TH, 1915.

Mr. J. B. CARSE,
Chairman, Advisory Board, United States Steel Corporation,
New York, N. Y.

DEAR SIR: We are forwarding to New York today, Appropriation No. 1283, for small tools purchased for our shops during the past year.

Heretofore tools of this kind have been charged to Operating Expenses, but under a Valuation Order of the Commission it is necessary for us to charge items of this kind, no matter how small, to Additions and Betterments and issue an appropriation to cover, and in order to avoid making so many appropriations, we are, whenever it is possible, consolidating them in this manner.

Sometime ago you requested that on all appropriations of $500 or more we send you copy of bids and contracts. Do I understand that in instances as outlined above that you wish to have this information? I do not understand that you want this information for small purchases of this kind, but would be glad if you would advise me so that we may handle it in the way you desire.

Yours very truly,

(Sgd.) A. F. BANKS.
President.

(President's File No. 1545)

UNITED STATES STEEL CORPORATION,
New York, October 26th, 1915.

Mr. A. F. BANKS,
President, Elgin, Joliet & Eastern Ry.,
Chicago, Illinois.

DEAR SIR: Your favor of the 18th inst. has been referred to me upon my return to New York from Birmingham.

We have looked over Company Appropriation No. 1283, which you forwarded to New York, and find that the items cover purchases of small tools.

We do not wish to trouble you to report purchases or contracts in amounts less than $500.

Thanking your for calling our attention to this matter, I remain

Yours very truly,

(Sgd.) JOHN B. CARSE.

(President's File No. 1545)

UNITED STATES STEEL CORPORATION. OFFICE COMPTROLLER,
New York, July 5th, 1916.

Mr. A. F. BANKS,
President, Elgin, Joliet & Eastern Ry. Co.,
Chicago, Illinois.

DEAR SIR: In view of the fact that Interstate Commerce Commission accounting rules prescribe railroad companies shall under certain conditions charge a proportionate part of expenditures in connection with renewals and replacements to Additions and Betterments. Instead of wholly to operating expenses as generally has been the practice in railway accounting, it is recommended the following regulation be observed in respect of the submitting (or not submitting) appropriation requests for such outlays chargeable Investment Account.

(Class 1)

Appropriation Requests to be submitted for following:

(a) For the excess cost of Steel Ties laid in lieu of wooden ties.

(b) For the excess cost of Steel Wheels substituted for iron wheels.

(c) For the excess cost of renewal and rebuilding of bridges, when such excess cost in respect of any single bridge is more than $5,000.

(d) For Betterments to Equipment through adding appliances and appurtenances, whether required by law or not.

As to classes (a), (b), and (d), it is appreciated that it is usually impracticable to submit appropriation request for definite and specific units and amounts. It is suggested, therefore, that semi-annually a general survey be made of the probable amount of money which will be expended for these purposes on Capital Account during the ensuing six months and an appropriation be submitted for a round-robin sum, which the understanding that the exact amount outlaid thereunder will be reported at the close of the six months period, when a new request can be filed for the succeeding six months' requirements.

Any sum called for per an appropriation request submitted per this plan which may unexpended at the close of six months period will be then cancelled.

Appropriations submitted for any of the foregoing purposes will be subject to the usual rules governing appropriations, namely, if in excess of $5,000 they should first receive the recommendation of the Finance Committee.

(Class 2)

Appropriation Requests need not be submitted

(e) For the cost of Increased Weight of Rails and Fastenings laid in renewals.

(f) For the Increased Cost of Switch Ties, Fastenings, Switch Material and Frogs and Crossings laid in renewals.

(g) For cost of additional Ballast and Widening of Embankments when such work is done in conjunction with reballasting and general ditching work.

(h) For the increased cost of bridges, when incurred in connection with renewal of bridges, provided the excess cost is more than $5,000.

Several of the subsidiary railroad companies are now submitting appropriations for the foregoing Class 2 expenditures, for purpose of perfecting their own records in connection with the Government valuation of their properties. There is no objection to their continuing this practice, but it will be understood that so far as the Corporation is concerned it is not required.

Yours truly,

(Sgd.) W. J. FILBERT.
Comptroller.

Approved:

J. A. FARRELL, *President.*

(President's File No. 1545)

UNITED STATES STEEL CORPORATION.
New York, July 19, 1917.

Mr. A. F. BANKS,
President, Elgin, Joliet and Eastern Ry. Co.,
Chicago, Ill.

DEAR SIR: Before placing any orders direct with our subsidiary manufacturing companies for their materials for your use in large and important construction or equipment work, or specifying their material under contract work placed with others including equipment, please confer with me, giving all particulars as to quantity of which required, purposes, etc.

Yours truly,

(Sgd.) J. A. FARRELL,
President.

(President's File No.)

UNITED STATES STEEL CORPORATION,
OFFICE OF THE COMPTROLLER.
New York, September 3, 1918.

Mr. A. F. BANKS.
President, Elgin, Joliet and Eastern Ry. Co.,
Chicago, Ill.

DEAR SIR: Referring to appropriations you may submit for additions and betterments. Our people would like to have you note on the face of these prominently whether or not the improvement has been initiated and recommended by the Federal Railroad Administration, or whether it is one which you have proposed as being for the interest of the Company or necessary for it. I dare say nearly all will come in the first named class, but this may not always be so particularly as to improvements within the steel plants.

Yours truly,

(Sgd.) W. J. FILBERT,
Comptroller.

(Auditor's File No. 103–A)

UNITED STATES STEEL CORPORATION.
Empire Building, New York, May 10, 1920.

To Presidents of Subsidiary Companies:

I beg to advise that on May 4th the Finance Committee, by resolution duly adopted, ordered as follows:

"That all original appropriations for improvements which involve an expenditure of less than $10,000 each (maximum heretofore being $5,000) or any appropriations for over-runs which with the original appropriation are less than $10,000, need not be presented to the Finance Committee for recommendation."

Under the above ruling the limit of appropriations for improvements which may be entered as so-called "Company" appropriations and the work thereunder commenced without first obtaining recommendation of the Finance Committee, is raised from $5,000 to $10,000, but all such appropriations should as heretofore be promptly forwarded to the Corporation in Accordance with the existing rules.

Will you please advise such officials and departments of your company as 're interested.

Yours truly,

W. J. FILBERT,
Comptroller.

(President's File No. 1545)

UNITED STATES STEEL CORPORATION,
OFFICE OF THE COMPTROLLER,
New York, July 8th, 1920.

To Presidents of Subsidiary Companies:

Referring to my letter of May 10th, 1920, advising of resolution of Finance Committee to effect that original appropriations for improvements which involve and expenditure of less than $10,000 each need not be presented to the Finance Committee for recommendation.

Some of the companies we find are interpreting this to mean that expenditures for purchase of additional real estate and lands involving more than $5,000 and less than $10,000 need not first be submitted in the usual way for recommendation by the Finance Committee. This was not the intent of the resolution nor do we think the working of the resolution indicates that the provision extends to purchase of real estate and land. Please note that it refers to original appropriations for "improvements." We have never used the term "improvements" as extending to and embracing additional real estate and land purchases.

Will you kindly be governed accordingly in connection with desired purchases of real estate and lands.

Yours truly,

(Sgd.) W. G. FILBERT,
Comptroller.

(Copy of copy—Auditor's File 103–A General File)

RSM–A.
JULY 16TH, 1920.

Mr. J. HORRIGAN,
Supt. Motive Power, E., J. & E. Ry.,
Joliet, Ill.

DEAR SIR: In order to comply with the wishes of the Steel Corporation, will you please have prepared and sent me as soon as possible, estimates to cover the last six months of 1920, covering replacing cast iron wheels with steel wheels, safety appliances, and other devices to cars and locomotives, in order that we may have prepared and submitted to New York for approval, necessary appropriations to cover.

Yours truly,

Vice President.

cc G. W. WILLIAMS.

(President's File No. 1545)

UNITED STATES STEEL CORPORATION,
New York, December 14th, 1920.

Mr. A. F. BANKS,
President, Elgin, Joliet & Eastern Ry.,
208 South LaSalle St., Chicago, Illinois.

DEAR SIR: We find by our records that your Company has not made reports on purchases and contracts since May 2nd, 1918.

Will you kindly send the usual information for all purchases and contracts under the following appropriations:

U. S. S. No.	U. S. S. No.	U. S. S. No.	U. S. S. No.
2174	2569	2725	3172
2225	2575	2820	3175
2315	2580	2927	3176
2318	2582	2976	3193
2388	2606	3078	3226
2417	2609	3090	3229
2418	2711	3105	3230
2473	2714	3106	3235
2494	2715	3109	3236
2495	2719	3110	3244
2514	2720	3123	3245
2521	2722	3136	3255
2549	2724	3146	3275
?(500 Box cars.)			3285

In the future we will be glad to have these reports forwarded to New York as soon as negotiations are completed.

Thanking you for giving this matter attention, I remain

Yours very truly,

JOHN B. CARSE.

JBC/EC.

(President's File No. 1545)

DECEMBER 23RD, 1920.

Mr. JOHN B. CARSE,
Purchasing Agents' Committee,
U. S. Steel Corporation, New York, N. Y.

DEAR SIR: Referring to your letter of the 14th listing a number of appropriations on which you claim the usual information of the purchases consisting of a statement of the bids together with a copy of same has not been furnished for your file:

You probably know that this was more or less brought about by the fact that during Government Control this was discontinued and in some way has not been revived.

In checking over the various appropriations it will be necessary to furnish you with the data as referred to on a great many of them. At the same time, believe there are quite a few that do not

require reporting of this nature, particularly appropriations as follows:

2174	2715	3078	3244
2521	2719	3090	3245
2711	2720	3172	3255
2714	2820	3229	3285
	2976	3230	

Under the above, #3229 and #3230 cover way car construction which can only be reported on after our purchases are complete. The same condition holds true with #3225. The others in this list, according to the nature of the work performed, do not call for any comparison of bids as it is ordinary purchases of specified material and work as performed in our shops. If you will scrutinize the detail accompanying these estimates you will recognize the exception.

Under the list we also find appropriation 3123 and 3275. In referring to the detailed estimates we find it consists of a great quantity of miscellaneous material, no one item amounting to very much and is of such a nature as we had assumed would not require reporting as I do not believe reports have been made in the past on work of this kind.

The same holds generally true with appropriations 2315, 2318, 2473, and 2494. However, in connection with these four appropriations there may be some items in the general bill of material that would be of reasonable importance and warrant competitive bids and information being submitted. I would request that you refer to the detailed estimates on these particular appropriations and advise your wishes in connection with them.

Other appropriations not particularly referred to will require reports either in full or partially so, due to the nature of the material, and this data will be worked up and submitted to you as promptly as possible.

Yours very truly,

A. F. BANKS.
President.

(President's File No. 1545)

UNITED STATES STEEL CORPORATION,
71 Broadway, Empire Building,
New York, December 28th, 1920.

Mr. A. F. BANKS,
President, Elgin, Joliet & Eastern Railway Co.,
208 South LaSalle St., Chicago, Illinois.

DEAR SIR: Your favor of December 23rd received and contents carefully noted.

It has been customary for the Subsidiary Companies including the Railroads, to report to this office all contracts and purchases in amounts of $500 or over, placed under Appropriations. We will be

glad to have such reports made, as requested in our letter of December 14th.

In case work some of the Appropriations was done by Company Forces, or purchases made from other Subsidiary Companies, please so state.

Yours very truly,

(Sgd.) JOHN B. CARSE.
Chairman, Purchasing Agents' Committee.

Note:
C. H. K.
P/N and arrange accordingly. Suggest you write Mr. Carse. You will arrange to report in line with his wishes and submit letter to me for Mr. Banks signature.
R. S. M. 12/30/20.

(President's File 1545)

ELGIN, JOLIET & EASTERN RAILWAY COMPANY,
Chicago, January 6, 1921.

Appropriation No. 2606.
Appropriation Date Sept., 1918. Amount 18,668.64. For Cost of applying Superheaters to 4 Locomotives.
Date of Order 8–31–18.
Placed with Locomotive Superheater Co. Comparison of Proposals for Four Sets Superheaters.
Date of Bid, ? ; Name of Bidder, Locomotive Superheater Co.; Price, $7,264.
Remarks: No competition. See letter attached from Operating Department, stating reasons for so placing the business.

(President's file No. 1545)

UNITED STATES STEEL CORPORATION,
New York, January 11th, 1921.

Mr. A. F. BANKS,
President, Elgin, Joliet and Eastern Ry. Co.,
Chicago, Illinois.

DEAR SIR: We acknowledge receipt of your two letters of January 5th, F–39 and 40, enclosing data covering purchases under Appropriations 2606, 2609, 2417, and 2418, and thank you for the same.

In the future, please send separate data sheets for each purchase amounting to $500 or over.

We enclose a sample data sheet used by all the Subsidiary Companies, including Railroads. Two copies of this data sheet should accompany each report, one of which is stamped and returned to you as an acknowledgment. It is customary to send with the data sheet, copies of the accepted and rejected bids, and specifications, if any. In case the order is placed without competitive bids or not

given to the lowest bidder, a letter of explanation from the Operating Department should be attached.

When purchases are made from Subsidiary Companies, it will be sufficient to send data sheet only.

If any further information is desired, we will be pleased to give it to you.

Yours very truly,

(Sgd.) JOHN M. CARSE,
Chairman, Purchasing Agents' Committee.

(President's File 1545)

UNITED STATES STEEL CORPORATION,
OFFICE OF THE PRESIDENT,
New York, January 22, 1921.

To Presidents of Subsidiary Companies:

Under advices issued last May the amount of any expenditures for an additional and improvement which could be undertaken without formal recommendation by the Corporation was raised to $10,000. However, we beg to advise that in the case of expenditures for welfare work which involve the purchase of land by the company we desire to pass upon any such work before the land is purchased and the work undertaken, even though the aggregate cost of the land and the improvements to be made will not exceed $10,000. Therefore, all proposed outlays for purchase of land and improvements to be made thereon in connection with welfare work should be covered by appropriations first submitted to the Corporation for its review and recommendation.

Yours truly,

(Sgd.) J. A. FARRELL,
President.

(President's File No. 1492)

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY,
OFFICE OF THE PRESIDENT,
MAY SECOND, 1922.

Mr. JAMES A. FARRELL,
President, United States Steel Corporation,
71 Broadway, New York, N. Y.

DEAR SIR: Referring to Chairman Gary's remarks at the meeting January 26th, I wish to advise that all expense accounts incurred by our officers and employes are approved either by Vice President Rogers or myself.

Welfare work: Careful scrutiny is given to the expense of our Illinois Steel Club at Joliet and our Y. M. C. A. expenses at Rossville and Gary. Our expenses have never been large in the past and are now at a minimum.

Purchases: Personal attention is given both by Mr. Rogers our Vice President and myself to our inventory as well as to purchases. Careful scrutiny has been made and there has never been the slightest indication of any gratuity direct or indirect in connection with any purchases.

Executive and general offices: As business fluctuates careful attention has always been given to keep our organization intact and in many cases subordinate officials have been relieved of their duties and given other work in order to have our organization ready when business picks up.

We believe our organization is well in hand. Our operating ratio was 70.29 percent for the first three months of 1921. With a reduction in business we also made a reduction in operating expenses showing an operating ration of 57.11 percent during the first three months of 1922.

Yours truly,

(Sgd.) A. F. BANKS,
President.

[Copy]

(Auditor's File 103–A General)

UNITED STATES STEEL CORPORATION,
OFFICE OF THE COMPTROLLER,
New York, May 10, 1922.

Mr. A. F. BANKS,
President, Elgin, Joliet & Eastern Ry. Co.,
Chicago, Ill.

DEAR SIR: It has been suggested by the Finance Committee that subsidiary companies which at April 1st had unexpended balances on appropriations which originally called for an outlay of more than $10,000 each, should make a careful review of the same and submit to the Committee a report, in respect of each appropriation, of the estimated amount which has been and will be saved in comparison with original authorization in consequence of changes in prices for materials, labor, and other general costs.

I have been directed by the Chairman and President to convey this request to you and ask that you have forwarded to me a report on the foregoing by May 25th. In order that the reports may be of uniform style for convenient review, I enclose outline of form which we would like to have used for this purpose, both as to size of blank and arrangement.

Yours truly,

(Signed) W. J. FILBERT,
Comptroller.

S–Encl.

(President's File No. P–778)

RSM–M.
MAY 23RD, 1922.

UNITED STATES STEEL CORPORATION,
71 Broadway, New York.

DEAR SIR: As requested in your letter of May 10th, I attach hereto report showing estimated amount which has been and will be saved in comparison with original authorization of open appropriations, which originally called for an outlay of $10,000 each, for our Company, which has been prepared as of April 1st.

I believe this report has been prepared in the manner desired by you.

Yours very truly,

President.

Encl.
[Copy.]
Our file copy taken by Mr. Rogers to New York, 5/22. RSM.

(President's File 1545)

UNITED STATES STEEL CORPORATION,
OFFICE OF THE PRESIDENT,
New York, September 8th, 1922.

(Circular letter to All Presidents)

Mr. A. F. BANKS,
President, Elgin, Joliet, and Eastern Ry. Co.,
Chicago, Illinois.

DEAR SIR: We are assuming in connection with all open appropriations that you have protected yourself on contract work, on contracts for equipment, as also for the larger quantities of materials required, so that the cost of same will be within the estimates as provided in the authorized appropriations.

It may be that the labor cost included in appropriations will be somewhat exceeded; as to this, please advise at your early convenience and if you find additional expense will be necessitated on this score, kindly submit statement of such estimated additional requirements for labor cost, specifying the amount for each appropriation.

We desire to ascertain promptly whether, and to what extent, increased outlays may be necessary arising from the recent wage increase, and have an opportunity to review such cases before you proceed with the expenditures.

Yours very truly,

(Sgd.) J. A. FARRELL,
President.

(President File No. 1492)

UNITED STATES STEEL CORPORATION,
OFFICE OF THE PRESIDENT,
New York, March 14th, 1923.

(Circular letter to all Presidents)

Mr. S. M. ROGERS,
Vice President, E., J. & E. Ry. Co.,
Chicago, Illinois.

DEAR SIR: A study of overhead costs in comparison with similar expenses in earlier years suggests the inquiry whether we are not overmanned in some departments or whether expenditures are not being incurred in certain directions and for certain purposes which could properly be eliminated. While the sold-up condition of the mills for the next few months will entail practically full operation, yet the greatest care should be taken to see that such degree of operations does not afford an excuse for letting down in the exercise of rigid economy in all administrative, selling, and supervisory departments.

We suggest that a careful survey be made of all departments with the view of determining whether there exists any unproductive routine, overlapping of departments, surplus staff, unnecessary statistical and so-called efficiency work, or extravagant welfare activities. In addition it is felt that rigid rules should be laid down to the effect that all requisitions for increasing the staff or the undertaking of added activities or expense in any department should before being approved, be subjected to careful investigation and consideration.

Upon completion of your investigation along the lines suggested we shall be pleased to hear from you.

Yours very truly,

(Sgd.) J. A. FARRELL.
President.

(President's File No. 1492)

ELGIN, JOLIET, AND EASTERN RAILWAY COMPANY,
OFFICE OF THE VICE PRESIDENT,
March 22, 1923.

Mr. J. A. FARRELL,
President, U. S. Steel Corporation,
71 Broadway, New York, N. Y.

DEAR SIR: Referring to your letter of the 14th making inquiry as to whether we may be overmanned in some departments or whether expenditures are being incurred in certain directions, and for certain purposes, which could properly be eliminated.

I have made a careful investigation and can not find that there is any department in which we could make reductions at this time,

consistent with economic operation. Our supervisory Forces have always been kept to a minimum, and as a matter of fact I think are lower than other roads with as many employes as we have and with a business of the same proportion.

No increases in our staff, nor any expense in any department is being approved until after careful investigation and consideration such expense is felt to be warranted. These questions will continue, as they have in the past, to have close supervision.

Yours truly,

(Sgd.) S. M. ROGERS,
Vice President.

(President's File No. 1545)

UNITED STATES STEEL CORPORATION,
71 Broadway, New York, April 18th, 1923.

Mr. A. F. BANKS,
President, Elgin, Joliet, and Eastern Ry.,
208 S. LaSalle St., Chicago, Illinois.

DEAR SIR: Replying to your favor of the 14th inst., K-18317: We take pleasure in giving you the desired information regarding reporting purchases and contracts to New York.

It is desirable to have in this office copies of all agreements for purchases by the Subsidiary Companies of materials and equipment. A minimum of $500 was established in order to minimize the work in making reports. In a great many instances, the unit price may be less than $500, but report should be made in case the total purchase exceeds that amount.

Yours very truly,

(Sgd.) JOHN B. CARSE,
Chairman, Purchasing Agents' Committee.

(President's File No. 1545)

UNITED STATES STEEL CORPORATION,
71 Broadway, New York, March 17th, 1924.

Mr. A. F. BANKS,
President, Elgin, Joliet & Eastern Ry. Co.,
208 South LaSalle St., Chicago, Ill.

DEAR SIR: It has been customary for the Subsidiary Companies to make reports to this office on purchases and contract in amounts of $500.00 and over, under Corporation and Company appropriations, forwarding data sheet and copies of accepted and rejected bids.

For the present, it will be sufficient to report these purchases and contracts when the total amount is $1,000 and over.

Yours very truly,

J. M. CARSE,
Chairman, Purchasing Agents' Committee.

(Circular Letter to All Presidents)

UNITED STATES STEEL CORPORATION,
OFFICE OF THE PRESIDENT,
New York, March 25th, 1924.

Mr. A. F. BANKS,
President, Elgin, Joliet & Eastern Railway Company,
208 So. LaSalle Street, Chicago, Ill.

DEAR SIR: It has been customary for our Subsidiary Companies to make reports to Mr. John B. Carse, Chairman, Purchasing Agents' Committee, of purchases and contracts in amounts of $500 and over when covering materials for use under Corporation and Company appropriations.

It is now requested that similar data be reported to Mr. Carse for all purchases of materials and equipment under any contract or negotiated purchase when for operating purposes or when for general inventory stock and when the amount of each of such transactions exceeds $10,000. The reports should be accompanied by data sheets showing the competitive prices bid, and in cases where a contract or purchase is concluded without competitive bids, or is not given to the lowest bidder, the reasons should be stated.

Yours very truly,

J. A. FARRELL,
President.

(Copy of copy—Auditor's file 97–B General File)

UNITED STATES STEEL CORPORATION,
71 Broadway, New York, June 12th, 1925.

To Accounting Officers of Subsidiary Companies:

In reporting to the Finance Committee the expenditures for the month covered by Exhibit E, we have been unable to furnish results as early as desired because of waiting for the detailed typed exhibits rendered by you. Acordingly, when Exhibit E sheets can be completed and forwarded to us to reach here by the 20th inst. it will be appreciated. However, it is realized that in most companies this is impracticable. Therefore, in order that we may meet the desires of the Finance Committee we propose you render us a special report per attached form. This form should be mailed if possible to reach this office not later than the morning of the 20th, or if unable to do that practicably then to wire the results as soon as available, forwarding the completed Exhibit E schedules as soon thereafter as possible.

Yours truly,

W. J. FILBERT, *Comptroller.*

UNITED STATES STEEL CORPORATION,
OFFICE OF THE COMPTROLLER.

E., J. & E. Company, totals of month columns on Exhibit E (Expenditures statements) for month of May 1925

	Code Letter	Expended in Month	Code Letter	Written-off to D. & R.
Property	P		W	
Depreciation and Replacements	D			
Relining	R			
Stripping	S			
Miscellaneous Accounts	M			
Total	T			

Instructions: This information is required by Comptroller, United States Steel Corporation, to be received not later than the first mail on the 20th of each month. If it is impossible to have either the exhibits or this form typed and mailed to meet this schedule the information should be telegraphed on the 19th using the code letters, for the respective items and amounts. Ignore cents in telegraphing.

Explanation: "Expended in month" means the total before the Write-off to Depreciation and Replacement Fund.

"Property" refers to Real Estate, Plants, Construction, Investment in Motor Vehicles, and any other sub-sections of Property usually reported on the exhibits headed Property, Construction, Plant, Road and Equipment.

The other sections are the usual accompanying forms of Exhibit E for which totals of the months charges are desired.

(President's File No. 1545)

UNITED STATES STEEL CORPORATION,
71 Broadway, New York, January 26th, 1926.

Appropriation Requests—E., J. & E. Ry. Co.

DEAR MR. BANKS: Referring to conversation January 13th in regard to the condensed summary which we are required to make up for each appropriation request:

It is desirable that the blanks for each request should tell the whole story in such detail, with suitable blue print (when necessary) that here in New York we will have a complete picture of the situation and be able to answer any question that may be raised in connection with the appropriation.

The transmitting letter should not repeat the wording of the appropriation request, but we will very much appreciate it if such letters summarize the appropriation request briefly, if possible, as to its:

(a) Purposes, (b) Advantages, (c) Necessity, (d) Savings to be realized in dollars per annum, or other benefits to be derived.

If your appropriation requests and letters reach us in this form we will be saved time and trouble in writing up an analysis, and will tend generally to facilitate the handling of appropriations.

Referring to your letter of January 6th, Elgin, Joliet & Eastern Railway Company appropriation request U. S. S. 4458: For the purpose of illustrating the point I enclose copy of the memorandum we made up and attached to your letter and appropriation request blank before it was submitted to the Finance Committee.

Of course, all letters should be addressed as heretofore to Mr. D. G. Kerr, Vice President.

Appreciating your co-operation,

Yours very truly,

(Sgd.) J. M. SIAS,
Asst. to Vice Pres.

To Mr. A. F. BANKS,
Pres., Elgin, Joliet & Eastern Ry. Co.,
Chicago, Ill.

(President's File No. 1545)

SMR–G
JANUARY 28TH, 1926.

Appropriation Requests—E., J. & E. Ry. Co.

DEAR MR. SIAS: I am in receipt of your letter of the 26th.

Hereafter in submitting appropriation requests to New York we will endeavor to prepare same, together with the transmitting letter in the manner suggested by your.

It is our desire to co-operate with you in this matter to the fullest extent, and if any future appropriations are not prepared in just the manner in which you desire, would appreciate it if you will call the matter to my attention, so that any errors may be promptly rectified.

Yours truly,

(Sgd.) A. F. BANKS,
President.

Mr. J. M. SIAS,
Asst. to Vice Pres., U. S. Steel Corporation,
71 Broadway, New York, N. Y.

(Copy of copy—attached to appropriation No. 5016)

HVA–G
JANUARY 10TH, 1928.

DEAR SIR: Attached please find four copies of the following appropriation request for consideration by the Finance Committee:

Subject—Appropriation Request—Elgin, Joliet and Eastern Ry. Co.:

Number, USS 5016.

Amount, $18,137.00.

For, Cost of drilling new well, installing pumping machinery, and making necessary alterations and additions to Pump House, Dyer, Ind.

Necessity—Shortage of water for Locomotives due to installation of drainage system which dried up slough from which we secured considerable water.

Yours truly,

President.

Mr. D. G. KERR.
Vice President, U. S. Steel Corporation,
New York, N. Y.

(Copy of original—attached to appropriation No. 5016)

UNITED STATES STEEL CORPORATION.
71 Broadway, New York, January 16, 1928.

Appropriations—E., J. & E. Ry. Co.

MY DEAR SIR: Referring to your letter of January 10th, Elgin, Joliet & Eastern Railway Company appropriation request 5016, cost of drilling new well, etc.:

The request blank states: "In the past our water supply at this station has been secured from two wells and water which was carried from surface", etc.

Where do you now secure water supply for Dyer?

What are your average daily requirements in gallons, and for what purpose used.

We also note the request blank states: "We believe that by putting a deep well", etc.

What tests have you made to prove that the proposed well will give satisfactory quantity and quality of water for your purposes?

Is there no other satisfactory source of water supply than that now proposed, which requires additional machinery, etc.

Yours very truly,

(Signed) D. G. KERR.
Vice President.

To Mr. A. F. BANKS,
President, Elgin, Joliet & Eastern Railway Company, Chicago, Illinois.

JMS

(Copy of copy—attached to appropriation No. 5016x)

SMR–G
JANUARY 20TH, 1928.

Mr. D. G. KERR.
Vice President, U. S. Steel Corporation,
71 Broadway, New York, N. Y.

Appropriations—E., J. & E. Ry. Co.

DEAR SIR: Referring to your letter of the 16th with reference to Elgin, Joliet & Eastern Railway Company Appropriation Request No. 5016 covering cost of drilling new well, etc., at Dyer, Ind.

We are at the present time securing our water supply from two wells, but with the installation the drainage system referred to on the face of the appropriation the surface slough on which we have also depended in the past for water has dried up, so that our supply of water has decreased to a point where we can not depend on a sufficient supply to take care of our requirements. Our average daily requirements are 300,000 to 325,000 gallons, same being for locomotive use.

From our past experience with wells at this point and experience of others adjacent to this location, we believe there is no question but what by putting down a 14″ deep well we will secure an ample supply, and we know of no other source than the one proposed, from which we could secure such supply. The present machinery is obsolete and we believe by the installation of the proposed modern machinery we will not only take care of our requirements, but also at a lower cost than at the present time.

This is one our most important water stations and it is absolutely necessary that we have a dependable supply of water at all times.

Yours truly,

President.

(Copy of copy—attached to appropriation No. 5016.)

UNITED STATES STEEL CORPORATION,
71 Broadway, New York, February 14, 1928.

Appropriations—E., J. & E. Ry. Co.

MY DEAR SIR: Elgin, Joliet, and Eastern Railway Company appropriations, which have been recommended, are enclosed herewith, as follows:

(AFE)	USS	Amount	Purpose
(3330)	5016	$18,137.00	Well, pumping machinery, and pump house changes, Dyer, Indiana.
(3331)	5020	$18,831.84	Steel underframes to 20 Way cars, CLS&E.
(3332)	5035	$15,544.00	Scale to replace scale on Track G-15, East Joliet Yard.

Please acknowledge receipt.
Yours very truly,

(Signed) D. G. KERR,
Vice President.

To Mr. A. F. BANKS,
President, Elgin, Joliet & Eastern Railway Company,
Chicago, Illinois.

1-1.
JMS

(Copy of Copy—Attached to Appropriation No. 5016.)

CBM-G

FEBRUARY 16TH, 1928.

Appropriations—E., J. & E. Ry. Co.

Mr. D. G. KERR.
(Copy of Original—Auditor's File 97 B General File)
71 Broadway, New York, July 3rd, 1929.

DEAR SIR: I wish to acknowledge receipt and thank you for Appropriation Nos. 5016, 5020, and 5035, which have been approved by the Finance Committee.
Yours truly,

President.

(Copy of original—Auditor's file 97 B General File)

UNITED STATES STEEL CORPORATION,
71 Broadway, New York, July 3rd, 1929.

To Accounting Officers of Subsidy Companies:

It seems desirable to reissue the circular letter of general instructions sent out a considerable number of years since respecting the report covering Quarterly Forecast of Unexpended Balances on Appropriations. It is desired to add to the several accounts for which reports are required the Coke Oven Rebuilding Fund. Aside from this there are practically no changes in the advices which are as follows:

1. When to be rendered: By 20th of each April, July, and October, and January.

2. Separate Reports to be rendered: For appropriations chargeable to each, "Property or Construction", "Depreciation and Replacement Fund", "Blast Furnace Relining Fund", Coke Oven Rebuilding Fund", and (in case of Mining Companies), "Mine Stripping and Development." "Property or Construction" should include open appropriations for real estate and motor vehicles.

3. Appropriations to be reported on: All authorized by the Corporation and all "under $10,000 appropriations" entered by the companies on which balances remain unexpended. This may include appropriations entered up to the closing of the report. But no report need be made of expenditures on appropriations which are distributed to general accounts other than those listed in paragraph 2 preceding. We would prefer all amounts to be stated in dollars only, omitting cents.

4. Forecast of Future Expenditures to Cover: January report. Amount unexpended January 1, and amount to be charged in accounts in each succeeding month, January to June, inclusive, the 6 months ending December 31, and in period after December 31.

April report: Amount unexpended March 1, and amount to be charged in accounts in each month, June to December, inclusive, and four months to December 31 and in the period after December 31.

July report: Amount unexpended June 1, and amount to be charged in accounts in each month, June to December, inclusive, and in period after December 31.

5. Unexpended Balances: The Grand Total Unexpended on these reports should be the estimated amount required to complete, if same is known, and should not necessarily be confined to the unexpended balance of the appropriation. The sum of the amounts distributed to the several months and periods should total to the Grand Total Unexpended. All columns should be footed.

We will furnish on request whatever supply of blank forms of kinds heretofore used which you may desire.

Yours truly,

W. J. FILBERT,
Comptroller.

ACZ:D

(Copy of Original—1930 Budget in Office of President)

UNITED STATES STEEL CORPORATION,
71 Broadway, New York, September 5, 1929.

Budget for Year 1930—Forecasts for Years 1931 and 1932

MY DEAR SIR: We hand you herewith Budget Instruction Sheet, together with suggested forms of Tabulated and Summary Sheets, in order to obtain a uniform compilation of the Budget for the year 1930 and Forecasts for the years 1931 and 1932.

In listing the various items we suggest you show separate groupings for—

1. Main Line Tracks.
2. Siding and Yard Tracks.
3. New Locomotives: Number and Type.
4. Old Locomotives:
   (a) Repairs and Replacements.
   (b) New Appliances.
5. New Cars: Number and Type.
6. Old Cars:
   (a) Repairs and Replacements.
   (b) New Appliances.
7. Other Miscellaneous Items to be shown according to their nature.

The Budget, complete, is to be submitted by December 1, 1929.

Yours very truly,

(Signed) D. G. KERR,
Vice President.

JMS
Enc.
To Mr. A. F. BANKS,
President, Elgin, Joliet & Eastern Railway Co.,
Chicago, Ill.

(Copy of Copy—Attached to Appropriation No. 5425x)

CBM–G

OCTOBER 16TH, 1929.

DEAR SIR: Attached please find four copies of the following appropriation request for consideration by the Finance Committee:

Subject: Appropriation Request—Elgin, Joliet & Eastern Ry. Co.:
Number, USS 5425.
Amount, $505,052.00.
For, Cost of additional Yard facilities at Gary, Ind.
These Yard Facilities are required to take care of increased business in the Gary District.
Yours truly,

President.

(For approval see A F E #3882.)

Mr. D. G. KERR,
Vice Pres., U. S. Steel Corporation,
New York, N. Y.

(Copy 1930 Budget in Office of President)

SMR–G

NOVEMBER 30TH, 1929.

Mr. D. G. KERR,
Vice Pres., United States Steel Corporation,
71 Broadway, New York, N. Y.

DEAR SIR: In compliance with request contained in your letters of September 5th and 11th asking for budget for year 1930 and forecasts for 1931 and 1932, I am sending you herewith budget and forecasts for the years in question.

We have endeavored as far as possible to follow out your suggestions in preparing these budgets and believe the data contained in same covers all the information requested by you. The amounts shown against each item as the estimated cost is, as near as we can estimate at this time, the gross amount which will be shown in the appropriation blanks when forwarded to you for approval.

In other words, in the case of rebuilding cars the item of cost represents not only the cost of labor and new material, but also the value of the reused material, which is in accordance with the Accounting Rules of the Interstate Commerce Commission. When appropriations are prepared, however, they will indicate the actual cash outlay. The same thing is true in cases where we will be required to build new yards in the Plants of the Illinois Steel Company at South Chicago and Gary to replace present yards, which it is necessary to take up in order to make room for new mills. In such cases the estimated cost covers the gross cost of the new tracks, the salvage value of the old tracks being debited back into stock.

In preparing the budget and forecasts we have endeavored to include all improvements which we can forsee at this time, including all tracks asked for by the Illinois Steel Company up to date in connection with their new work in their different Plants. There

will, however, undoubtedly be additions and improvements which we are unable to forsee at this time, and for which appropriations will be submitted in the regular way.

With reference to the items of "Viaducts and Subways". This is naturally more or less guess work, and will depend entirely on the program of road building which may be carried out by the State, County, or Municipal authorities, and while we have tried to include in the budget and forecasts all the work of this kind of which we have any definite information, at the same time there are a large number of other points where grade separations undoubtedly will be asked during the next three years.

It is also possible that sometime within the next three years the City of Chicago may require us to discontinue our present grade crossing at Burley Avenue where we enter the Plant of the Illinois Steel Company in South Chicago, and over which crossing it is necessary for us to operate in reaching the high line serving some of their furnaces. We have a plan worked out to take care of this which will run into a large amount of money, and while we hope we will not be called on to make this change in the near future, it is one of those improvements which we may be called on to make at any time.

It is also possible with the growth of the Illinois Steel Company's Plant at Gary that it will be necessary to enlarge our terminal facilities at that point. This, however, is something which will have to be determined later.

Trusting that the information we have furnished is in the form you desire it, I am

Yours truly,

President.

(Copy of Copy—Attached to Appropriation No. 5424x)

TMF—G

DECEMBER 9TH, 1929.

Mr. D. G. KERR,
Vice Pres., U. S. Steel Corporation,
71 Broadway, New York, N. Y.

DEAR SIR: I am in receipt of the following appropriations which have been approved by the Finance Committee, and for which I thank you: Number 5424, 5425, 5437, 5440.

Yours truly,

President.

(Copy of Original—Auditor's File No. 103–B General File)

UNITED STATES STEEL CORPORATION,
71 Broadway, New York, December 30, 1929.

Mr. C. G. HOLM,
Asst. Gen. Aud., Elgin, Joliet, and Eastern Railway Co.,
Chicago, Ill.

DEAR SIR: We have your favor of December 27, 1929, File 11–702, regarding combining appropriations Nos. 5444X and 5448X. We have since also written you about Nos. 5449X and 5450X.

The feature to which we would call your particular attention is that the aggregate of these requests is an amount that should be approved by the Finance Committee. Further, if there are additional tracks that will be required in connection with the installation of No. 4 Open Hearth the complete plan should be reviewed as a whole by the Illinois Steel Company so that you may submit a request that will cover all the work necessary.

We have not entered the 4 blanks submitted in our records, awaiting your decision, as you will probably wish to recall them.

Yours truly,

(Signed) H. L. AUSTIN,
Assistant Comptroller.
acs

ACZ:S

(Copy of Original—Attached to Appropriation No. 5468)

[Telegram]

Subsidiary Companies of United States Steel Corporation, Private wire service

31 JO

NEW YORK, *Jan. 2, 1930.*

A. F. BANKS:

Your Budget 1930 shows items 8 New Mikado Locomotives and 500 New Mill type gondola cars. Please wire percentage of each of these expenditures applicable to replacement of present equipment and that on account of increased business.

D. G. KERR.

1050 am.

(Copy of this telegram filed with 1930 Budget papers.)

(Copy of Copy—Attached to Appropriation No. 5468)

[Telegram]

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY,
(Mr. Banks.) *Chicago, Ill., January 2nd, 1930.*

Mr. D. G. KERR,
New York, N. Y.

Your wire date Approximately fifty percent of the eight new mikado locomotives our 1930 Budget can be considered for replacement and fifty percent increased business. However, in order to handle our business in a satisfactory and economical manner it is very necessary that we have the eight engines asked for. The five hundred gondola cars are applicable to replacement of equipment. With the cars which it will be necessary to retire this year we will have approximately seven hundred less cars of this type than we had in nineteen twenty-four.

A. F. BANKS.

Via YSS Wire.
(Copy of this telegram filed with 1930 Budget papers.)

(Copy of Copy—Auditor's File No. 103–B General File)

JAN. 6, 1930.

Mr. W. J. FILBERT,
Comptroller, United States Steel Corporation,
71 Broadway, New York City, New York.

DEAR SIR: Referring to your letter of December 18, 1930, relative to the status of certain appropriations, I wish to advise as follows:

Appropriation No. 4684–5137: For our proportion of the cost of viaduct for State Road at Eola.

This viaduct has been completed except for paving of the approaches which work is to be done by the State. The viaduct is being used at present but when the paving is being done it will be necessary for traffic to use the detour crossings, after which the detour crossings will be permanently closed. We will have a little work in connection with the closing of these crossings and will be unable to report the appropriation completed until charges for that work are determined.

Appropriation No. 5016X: For cost of new well and pump machinery at Dyer.

Drilling of this well has not been completed although the pump and all material for the pump house, etc., has been received. The well driller has experienced an unusual amount of difficulty on this job and it is impossible to forecast at this time when the job will be completed, but should be in the next sixty days.

Appropriation No. 5323X: Strengthening Bridge No. 16, North Chicago.

This work has been completed and so reported in November accounts.

Appropriation No. 5407X: Tracks on the Lake Front, I. S. Co. Plant, South Chicago.

These tracks have been laid as required by the Illinois Steel Company. Approximately $3,000.00 worth of work was done in December and it now appears that this work will be completed during the present month.

Trusting this is the information you desire, I beg to remain

Yours truly,

Assistant General Auditor.

JZ:E

(Copy of Original—President's File 1545)

UNITED STATES STEEL CORPORATION,
71 Broadway, New York, January 22, 1930.

Appropriation Requests—Reference to 1930 Budget

MY DEAR SIR: It will be very helpful to us if hereafter you include in each Appropriation Request, and also its accompanying condensed summary, a note of reference to the corresponding Budget item. Such note to fit the particular case and to be added after you have given the supporting reasons for the request. To illustrate:

A—If amount of Appropriation Request practically corresponds with the Budget item, please state: "Budget for 1930—This proposed expenditure included."

B—In case there is a material difference between the amount of Appropriation Request, and the Budget item, briefly state reasons therefor.

C—In case of an Appropriation Request for items not appearing in the Budget, briefly state reasons therefor.

Your co-operation will be appreciated.

Yours very truly,

(Signed) D. G. KERR,
Vice President.

JMS.

To Mr. A. F. BANKS,
President, Elgin, Joliet & Eastern Railway Company,
Chicago, Illinois.

[Copy]

(Attached to Appropriation No. 5468)

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY,
February 6, 1930.

DEAR SIR: Attached please find four copies of the following appropriation request for consideration by the Finance Committee:

Subject—Appropriation Request—Elgin, Joliet and Eastern Ry. Co.:

Number, USS 5468.

Amount, $666,824.00.

For: Cost of eight (8) Mikado Locomotives, Booster Equipped.

Present Equipment: Switching locomotives insufficient to economically handle present business. Advisable to sell or scrap 12 small switching engines 24 to 29 years old, entirely to light for present service. Expensive to maintain, and it is

Proposed: To replace them with 10 Consolidated type road engines 20 to 25 years old—in good condition—which, at a total cost of approximately $3,750, can be converted to switch engines; and to replace the Consolidated road engines with 8 new Mikado Booster Equipped locomotives.

Benefits: Increased switching capacity: reduced operating and maintenance expenses, which will effect

Annual Savings: Estimated at $50,000 to $60,000.

Budget 1930: Included expemditure of $650,000.

Yours very truly,

President.

Mr. D. G. KERR,
Vice Pres., U. S. Steel Corporation,
71 Broadway, New York, N. Y.

(Copy of original—Auditor's file 103–B General File)

UNITED STATES STEEL CORPORATION,
71 Broadway, New York, March 19, 1930.

Mr. C. G. HOLM,
Asst. Gen. Aud., Elgin, Joliet and Eastern Railway Co.,
Chicago, Ill.

DEAR SIR: In the preparation of appropriation blanks and also in the distribution of the charges, it seems to be a growing practice that the amounts stated include the cents, instead of being in even dollars. We do not know whether this is required by any regulation of the Interstate Commerce Commission, but for our purposes it is not necessary, and if the amounts could be stated in even dollars there would be a saving in the various entries we have to make.

You will appreciate that in the majority of cases, unless perhaps the appropriation may have been prepared for work already completed, the final results do not tie to the exact figures either for the amount appropriated or the distribution of accounts.

Under the circumstances, therefore, it would seem to us preferable that even dollars be used, whether the exact amount be known or not, unless there may be some objection of which we are not aware.

Yours truly,

(Signed) W. J. FILBERT,
Comptroller.

acz

ACZ:S

(Copy of Copy—Attached to Appropriation No. 5580)

GBM—M

APRIL 1ST, 1930.

DEAR SIR: Attached please find four copies of the following appropriation request for consideration by the Finance Committee:

Subject—Appropriation Request—Elgin, Joliet and Eastern Ry. Co.:

Number, 5580.

Amount, $77,484.00.

For: Cost of erecting a one story and basement office building of brick construction for our Superintendent Motive Power, Master Mechanic, Mechanical Engineer, General Storekeeper, and their forces; to replace present building, E. Joliet, Ill.

Present Brick Building: Is over 40 years old—in poor condition, and entirely inadequate, necessitating use of car bodies for additional office space. Further—it is impossible to properly heat or ventilate it.

Proposed Building: Will be so constructed that a second story may be added, if and when required.

Budget for 1930: Included, amount $87,100.00. Some changes have been made in the original plans and the estimate revised, which resulted in a decrease of $9,616.00 in the estimated cost.

Yours truly,

President.

Mr. D. G. KERR,
Vice Pres., U. S. Steel Corp.,
New York, New York.

(Copy of copy—attached to appropriation No. 5586)

GBM–G

APRIL 3RD, 1930.

DEAR SIR: Attached please find four copies of the following appropriation request for consideration by the Finance Committee:

Subject—Appropriation Request—Elgin, Joliet and Eastern Railway Co.:

Number, USS 5587.

Amount, $377.216.00.

For, Cost of 125—140,000# capacity steel Gondola Cars (C., L. S. & E. Ry. Co.).

Number, USS 5586.

Amount, $377,216.00.

For, Cost of 125—140,000# capacity steel Gondola Cars (E., J. & E. Ry. Co.).

Number, USS 5582.

Amount, $670,805.00.

For, Cost of building 300—50-ton 50′ steel underframe flat cars (C., L. S. & E. Ry. Co.)

Total Amount, $1,425,237.00.

Necessity: To partially replace old gondola and flat cars which have been retired, and will be retired during 1930.

By the end of this year we will have retired 828 cars having a carrying capacity of 38,480 tons.

The proposed cars will have a total carrying capacity of 32,500 tons, so that with the purchase or construction of these cars we will still show a deficiency in loading capacity of 5,980 tons.

The Flat Cars are to be used in general service, including the handling of long material in inter-mill service, but principally for movement of shipments to the docks for boat loading. The transfer of steel from cars to boats is performed with an overhead crane, and shippers insist on use of flat cars in order to eliminate the hazard to which employees are subject when working inside gondola cars.

The Gondola Cars will be 48′6″ long and 3′ deep—capacity 140,000# and are the most serviceable type for handling business requiring gondolas. This equipment can handle considerable long material, which now necessitates a double load, using two cars instead of one.

Estimated Cost, 300 flat cars—$670,805.00 or $2,236.00 per car. 250 gondola cars—$754,432.00 or $3,017.00 per car.

Estimated Cash Outlay: For the 250 gondola cars is $632,935.00 or $2,531.00 per car for material and labor only. To the item of material there has been added 8% for Store Expense and to the labor cost 10% for Shop Expense, which percentages are required under the Accounting Rules of the Interstate Commerce Commission. To the total we have added 10% for contingencies. Excluding the per-

centage covering Store and Shop Expenses our cost, including 10% for Contingencies, would be $701,520.00, or $2,806.00 per car.

For the 300 flat cars the estimated cash outlay is $462,762.00 or $1,542.00 per car. In addition to the cash outlay there will be charged to this appropriation an amount of $108,000.00 or $360.00 per car, representing the value of serviceable truck and air brakes removed from cars retired and used in the construction of flat cars. To the item of material there has been added 8% for Store Expense and to the labor cost 10% for Shop Expense, which percentages are required under the Accounting Rules of the Interstate Commerce Commission. To the total we have added 10% for Contingencies. Excluding the percentages covering Store and Shop Expenses, and the value of reused material our cost on the basis of actual cash outlay plus 10% for Contingencies would amount to $523,746.00 or $1,746.60 per car.

We propose to build all these cars in our own shops, and in this way hold our organization intact, which otherwise we would be unable to do. If we receive prompt authority to proceed with this work we can turn the cars out fast enough to take care of our business.

Budget 1930: 500 Gondola cars and 50 Flat cars included (total 550). However, we are convinced that requirements of our shippers will be better taken care of by adding to our requirements at this time the 300 flat cars and 250 gondola cars (total 550) asked for in the attached appropriation requests.

Yours truly,

President.

Mr. D. G. KERR,
Vice Pres., U. S. Steel Corporation,
New York, N. Y.

[Copy]

(Appropriation No. 5468)

SMR–G
APRIL 14TH, 1930.

Mr. D. G. KERR,
Vice Pres., U. S. Steel Corporation,
71 Broadway, New York, N. Y.

DEAR SIR: At the time Mr. Farrell authorized the purchase of the eight locomotives asked for in our Appropriation No. 5468, dated December 12th, 1929, he suggested in view of the fact that the locomotives were costing us less than the estimated figures used in the appropriation we have a new appropriation prepared to cover the cost.

I am, therefore, enclosing herewith revised appropriation No. 5468 for $620,000.00 to cover the cost of these eight locomotives. Will you kindly have this approved and send me one copy to complete my record, and return to me appropriation bearing the same number sent you with my letter of February 6th, and calling for $666,824.00.

Yours truly,

President.

(Copy of original—attached to appropriation No. 5580)

[Telegram]

Subsidiary Companies of United States Steel Corporation Private Wire Service

2413 JO NEW YORK, *April 21.*

A. F. BANKS:

Y. L. April 1. E., J. and E. appropriation request 5580. How many Employees will occupy and how many additional employees can be accommodated in proposed office building.

D. G. KERR.

328p.
(58 now, 27 additional.)

[Copy]

(Attached to Appropriation No. 5468)

UNITED STATES STEEL CORPORATION,
71 Broadway, New York, April 24, 1930.

Appropriations; E., J. & E. Ry. Co.

MY DEAR SIR: We enclose herewith Elgin, Joliet & Eastern Railway Company signed Appropriation 5468, amount $620,000, for eight Locomotives.

Yours very truly,

(Signed) D. G. KERR,
Vice President.

Enc.
JMS
To Mr. A. F. BANKS,
President, Elgin, Joliet & Eastern Ry. Co.,
Chicago, Ill.

[Copy]

(Attached to Appropriation No. 5468)

TMF—G
APRIL 26TH, 1930.

Mr. D. G. KERR,
Vice President, U. S. Steel Corporation,
71 Broadway, New York, N. Y.

DEAR SIR: I am in receipt of Appropriation No. 5468, which has been approved by the Finance Committee, and for which I thank you.

Yours truly,

President.

(Copy of Original—Attached to Appropriation No. 5580)

UNITED STATES STEEL CORPORATION,
71 Broadway, New York, May 9, 1930.

Appropriations: E., J. & E. Ry. Co.

MY DEAR SIR: The following Elgin, Joliet & Eastern Railway Company appropriations have been recommended and copies are enclosed herewith:

No.	Amount	For
5580	$77,484	Cost of erecting a 1-story-and-basement office building of brick construction for Superintendent Motive Power, Master Mechanic, Mechanical Engineer, General Storekeeper, and their forces, to replace present building, E. Joliet, Ill.
5581	7,050	Over-run on appropriation no. 5368 covering cost of 50 automatic dump cars.
5609	39,079	Cost of additional tracks and track changes near the lake front, Gary, Ind.

Kindly acknowledge receipt.
Yours very truly,

(Signed) D. G. KERR,
Vice President.

Encls.

To Mr. A. F. BANKS,
President, Elgin, Joliet & Eastern Railway Co.,
Elgin, Ill.

(Copy of Copy—Attached to Appropriation No. 5580)

AFB-M

(Hold open Budget.)

MAY 12TH, 1930.

Mr. D. G. KERR,
Vice President, United States Steel Corporation,
71 Broadway, New York, N. Y.

DEAR SIR: I wish to acknowledge receipt of your favor of the 9th instant enclosing the following E., J. & E. Ry. Co.'s Appropriations,

which I note have been approved by the Finance Committee and for which I thank you.

Appropriation No. 5580, No. 5581, No. 5609.

Yours truly,

President.

CBM

Do not send out A. F. E. for office Building until further advised by me. S. M. R.

(Copy of Original—President's File 1545)

UNITED STATES STEEL CORPORATION,
71 Broadway, New York, July 16, 1930.

Appropriation Requests

MY DEAR SIR: It is our desire that all appropriation requests be accompanied with suitable analysis summary to be submitted in each case in addition to the appropriation request blank and the transmitting letter. What we desire is that the request blank shall contain all essential data, detailed estimate of cost sheets, also suitable blue-print when construction work is involved, and set forth as good a word picture of the particular project as possible. In other words, tell the story on the request blank in such a way that here in New York we will have a real picture of your proposition.

After the request blank is prepared suitable transmitting letter should be written, but not duplicating the wording of the blank. In addition to said letter comes the summary sheet, which should briefly give the essential features of the request. To illustrate: Reference should first be made to your present situation with respect to age, condition, etc., of the equipment, structures, etc., to be repaired, replaced, or improved. Then give the following information:

Your proposed project and why it is necessary or desirable;

Benefits or advantages which will result from the proposed expenditures;

In case of replacements other than in kind, state estimated cost of replacing in kind;

Where possible to do so, state the estimated annual savings in dollars;

Lastly, Budget reference.

The subject in your letter and summary sheet should conform with the purpose as expressed in the appropriation request blank.

We solicit your co-operation to the end that all requests of subsidiary Raw Materials and Transportation Companies may be submitted in as near a uniform manner as practicable.

Yours very truly,

(Signed) D. G. KERR,
Vice President.

JMS

To: Mr. A. F. BANKS,
President, Elgin, Joliet & Eastern Railway Co.,
Chicago, Illinois.

(Copy of Copy—President's File #1545)

SMR–G
JULY 18TH, 1930.

Mr. D. G. KERR,
Vice Pres., U. S. Steel Corporation,
New York, N. Y.

DEAR SIR: Referring to your letter of the 16th outlining how you would like to have appropriation requests prepared.

We, of course, want to co-operate with you in every way possible, so that appropriations submitted may be in as near a uniform manner as practicable, and we thought we were preparing them in accordance with your former requests and instructions.

In order that future appropriations may be prepared in accordance with your wishes, I would suggest that you take one of your recent appropriations and prepare it in the manner in which you would like future appropriations submitted. By doing this, I believe the matter can be more satisfactorily handled, and avoid any misunderstanding in the preparation of future appropriations.

Yours truly,

President.

(Copy of Copy—Attached to Appropriation No. 5586)

TMF–G
JULY 28, 1930.

Mr. D. G. KERR,
Vice Pres., U. S. Steel Corporation,
New York, N. Y.

DEAR SIR: I am in receipt of Appropriation Nos. 5586, 5587, and 5582, which have been approved by the Finance Committee, and for which I thank you.

Yours truly,

President.

(Copy 1931 Budget in office of President)

UNITED STATES STEEL CORPORATION,
71 Broadway, New York, September 22, 1930.

Budget for 1931: Forecasts for 1932 and 1933

MY DEAR SIR: With the thought that it may be helpful in the preparation of your 1931 Budget and 1932 and 1933 Forecasts, we have mailed you supply of four different forms, which in arrangement will meet present requirements, and, as further possible assistance, we send you herewith sample form of Budget for 1931 and summary of same, on which we have made certain notations, which of course will also apply in the case of the Budget Forecasts and their summaries.

On the Summary Sheet you will note a column marked "Classification", in which please show the grouped items which naturally come under a certain head. To illustrate: Show separate group headings, such as—

Main Line Projects, subdivided as between Track Extensions, Grade Revisions, Bridge and other Structures, Automatic Signals, etc.;

Siding and Yard Projects, subdivided as between Track Extensions, Viaducts, etc.;

Locomotives: Cars, etc.

Miscellaneous.

With reference to not listing items under $10,000. This applies to certain scattered expenditures of different natures each of which does not amount to $10,000 and does not apply to those items each under $10,000 which are of the same general nature or part of a program the aggregate of same being a considerable amount.

Please send in your completed forms flat between cardboard so they will reach us in good condition ready for photostating.

While we have seemingly gone into considerable detail, please be assured it is only for the purpose of trying to secure greater uniformity in the reports as received here and to avoid unnecessary duplication of work at this end.

Your very truly,

(Signed) J. M. SIAS,
Assistant to Vice President.

To: Mr. A. F. BANKS,
President, Elgin, Joliet & Eastern Railway Co.,
Chicago, Ill.

(Copy of copy—attached to appropriation No. 5736)

TMF–G
DECEMBER 15, 1930.

DEAR SIR: Attached please find four copies of the following appropriation requests for consideration by the Finance Committee:

Subject—Appropriation Request—Elgin, Joliet and Eastern Ry. Co.

Number, USS 5736.

Amount, $8,418.00.

For, Cost of applying Nicholson Thermic Syphons to four (4) locomotives. E., J. & E. Ry. Co.

Number, USS 5737.

Amount, $12,627.00.

For, Cost of applying Nicholson Thermic Syphons to six (6) locomotives. C., L. S. & E. Ry. Co.

Total, $21,045.00.

Advantage: Use of the eevice insures increased circulation of water in boilers, less scale formation, and further safety protection against boiler explosion.

Savings: Fuel amounting to about $675.00 per engine per year or $6,750.00 per year on 10 engines or 32% on the investment.

Yours truly,

President.

Mr. D. G. KERR,
Vice Pres., U. S. Steel Corporation,
New York, N. Y.

(Copy of Original—Attached to Appropriation No. 5736)

UNITED STATES STEEL CORPORATION,
71 Broadway, New York, December 26, 1930.

Appropriations: E., J. & E. Ry.

MY DEAR SIR: The following Elgin, Joliet & Eastern Railway Company appropriations have been recommended and a copy of each is enclosed herewith:

Number	Amount	For
USS 5736	$8,418.00	Cost of applying Nicholson Thermic Syphons to 4 locomotives, E., J. & E. Ry. Co.
USS 5737	12,627.00	Cost of applying Nicholson Thermic Syphons to 6 locomotives, C., L. S. & E. Ry. Co.
USS 5739	21,374.00	Cost of installing tracks at site of Illinois Steel Company's proposed new 44" Slab and Blooming Mill and 96" Plate Mill, South Chicago, Ill.

Yours very truly,

(Signed) D. G. KERR,
Vice-President.

JMS
Encls.

To: Mr. A. F. BANKS,
President, Elgin, Joliet & Eastern Ry. Co.,
Chicago, Ill.

(Copy of Copy—Attached to Appropriation No. 5425x)

DECEMBER 29, 1930.

(AFE 3883)

Stamp: U. S. Steel Corporation, Dec. 31, 1930, Purchasing Department.

Mr. JOHN B. CARSE,
Chairman, Purchasing Agents' Committee,
United States Steel Corporation,
71 Broadway, New York, N. Y.

DEAR SIR: For your records, I enclose herewith statement of bids, as well as copies of orders placed for material covered by Appropriation No. 5425.

Yours truly,

President.

(Copy of Copy—Attached to Appropriation No. 5736)

DECEMBER 29TH, 1930.

(Stamp: Mr. Rogers, please note, CB, M.)

Mr. D. G. KERR,
Vice Pres., U. S. Steel Corporation,
71 Broadway, New York, N. Y.

DEAR SIR: I am in receipt of Appropriation Nos. USS 5736, 5737, and 5739, which have been approved by the Finance Committee, and for which I thank you.

Yours truly,

President.

(Copy 1930 Budget in President's Office)

UNITED STATES STEEL CORPORATION,
71 Broadway, New York, January 21, 1931.

Status of Budget for Year 1930

DEAR SIR: Please send us, as soon as possible, statement summarizing your Budget for year 1930 as follows:

1. Total amount of appropriations recommended account: (a) Items shown in your Budget; (b) Items not shown in your Budget.

2. Total amount of items shown in your Budget which are now: (a) Shown in 1931 Budget; (b) Shown in 1932 Forecast; (c) Shown in 1933 Forecast; (d) Deferred beyond 1933; (e) Abandoned.

Yours very truly,

(Signed) D. G. KERR,
Vice President.

JMS

To Mr. A. F. BANKS,
President, Elgin, Joliet & Eastern Ry. Co.,
Chicago, Ill.

[Copy]

(Attached to Appropriation No. 5813x)

G

FEBRUARY 12, 1931.

Mr. W. J. FILBERT,
Comptroller, U. S. Steel Corporation,
New York, N. Y.

DEAR SIR: Attached for your files and information please find copies of the following appropriations: Number 5813, 5821, 5823, 5824, 5825, 5826, 5827, 5828.

Yours truly,

President.

[Copy]

(Attached to Appropriation No. 5813x)

UNITED STATES STEEL CORPORATION,
71 Broadway, New York, February 24, 1931.

Mr. A. F. BANKS,
President, Elgin, Joliet and Eastern Railway Company,
Chicago, Ill.

DEAR SIR: This will acknowledge your favor of February 12, enclosing appropriations, Nos. 5813, 5821, and 5823–5828, both inclusive.

Yours truly,

(Signed) W. J. FILBERT,
Comptroller.
acz

ACZ: S

(Copy of Copy—Attached to Appropriation No. 5736)

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY,
208 South La Salle Street, Chicago, Ill., March 30, 1931.

(AFE 4338)

Stamp: U. S. Steel Corporation, Apr. 1, 1931, Purchasing Department.

Mr. JOHN B. CARSE,
Chairman, Purchasing Agents' Committee,
United States Steel Corpn., New York, N. Y.

DEAR SIR: For your records, I enclose herewith statement of bids, copy of same, as well as copy of order placed for material covered by Appropriation #5736.

Yours very truly,

President.

(Copy of Copy—Attached to Appropriation No. 5580)

APRIL 10, 1931.

(AFE 4142)

Stamp: U. S. Steel Corporation, Apr. 13, 1931, Purchasing Department.

Mr. JOHN B. CARSE,
Chairman, Purchasing Agents' Committee,
U. S. Steel Corporation,
New York, N. Y.

DEAR SIR: For your records, I enclose herewith statement of bids, copies of same as well as copies of orders placed for material covered by Appropriation #5580.

Miscellaneous purchases to date amount to $4,596.04.

Yours truly,

President.

AFB:IG

[Copy]

(Attached to Appropriation No. 5468)

(Stamp:) U. S. Steel Corporation, June 3, 1931, Purchasing Department.

MAY 29, 1931.

Mr. JOHN B. CARSE,
Chairman, Purchasing Agents' Committee,
United States Steel Corporation,
New York, N. Y.

DEAR SIR: As requested in your letter of May 13th to Mr. C. H. Kenzel, Purchasing Agent, I enclose herewith statement of bids,

3122

together with copies of same, covering material purchased on Appropriation No. 5468.

Yours truly,

President.

(Copy Budget 1932 and Budget Forecast 1933 and 1934 in office of President)

UNITED STATES STEEL CORPORATION,
71 Broadway, New York, October 8, 1931.

Budget for Year 1932—Forecasts for Years 1933 and 1934

MY DEAR SIR: Please note the following comments regarding Annual Budget to be submitted by December 1, 1931, all in line with Instruction sheet sent you September 5, 1929, and letters dated September 11 and 22, 1930:

Budget for 1932 should be based on average year of operations;

Size and arrangement of forms to be same as last year;

So far as practicable to do, please list on "Detail" and "Summary" Sheets the items in order of their importance from your Company's standpoint; that is, list the most important "Necessary" items first; next lesser important items, second, etc. Follow the same order with respect to "Desirable" items.

Yours very truly,

(Signed) J. M. SIAS,
Assistant to Vice President.

To Mr. S. M. ROGERS,
President, Elgin, Joliet & Eastern Ry. Co.,
Chicago, Ill.

(Copy of Copy—Attached to Appropriation No. 5192)

CBM:OL
November 25, 1931.

DEAR SIR: Attached please find four copies of the following appropriation request for consideration by the Finance Committee:

Number, USS 5192.

Amount, $14,617.00.

For, Over-run on Appro. 5016 covering cost of drilling new well, installing pumping machinery and making necessary alterations to pump house at Dyer, Indiana.

Original Appropriation was based on 700 foot well, but water was not found at that depth which made it necessary to drill deeper, and Sufficient Water for our requirements was not encountered until a depth of 1,705 feet was reached.

This Additional Depth caused material increases in the cost of drilling, casing, and other supplies which could not be anticipated.

Yours truly,

President.

Mr. D. G. KERR,
Vice President, U. S. Steel Corporation,
New York, N. Y.

(Budget 1932 and Budget Forecast 1933 and 1934 in Office of President)

SMR–G

NOVEMBER 30TH, 1931.

Mr. D. G. KERR,
Vice-Pres., U. S. Steel Corporation,
71 Broadway, New York, N. Y.

DEAR SIR: Complying with your request of October 8th we are mailing you today, under separate cover, Budget for the year 1932 and Forecasts for 1933 and 1934.

We have not included in the Budget for 1932 any equipment. It will, however, probably be necessary during next year to rebuild approximately 1,000 of the 70-ton cars belonging to the U. S. Coal & Coke Company which are leased to the E., J. & E. Railway. Our estimated cost for rebuilding these cars is roughly $1,776.00 per car, which will mean a total expense for the rebuilding of $1,776,000.00. This would be the cash outlay. However, in preparing an appropriation to cover this it would be necessary to include in same the value of the usable material, plus the customary percentages to be added for Store and Shop Expenses which would bring the total amount of the appropriation to a higher figure, although we do not anticipate the cash outlay would be greater than the amount named above. We have not included them in the Budget for 1932, for the reason, as you know, these cars, together with those which we have leased to the U. S. Coal & Coke Company have been the subject of discussion for sometime with reference to the question of final disposition of same. We have included cars and locomotives in our Forecasts for 1933 and 1934 as we hope that our business will warrant by that time the purchase of additional power and equipment. However, as you can readily understand our requirements in the way of power and equipment for 1933 and 1934 are very problematical.

It is also quite possible that the Illinois Steel Company will during the coming three years require additional tracks in their Plants, which we can not foresee at this time.

Included in our Budget and Forecasts are a number of grade separations. These are more or less guess work and depend entirely

upon what the Highway Commission may do in the way of construction of new highways, or rebuilding present highways. There are a number of grade separations which may possibly be considered during the period 1932, 1933, and 1934, which we have not shown in our Budget or Forecasts, for the reason that it is impossible at this time to forecast what the State may require. The ones which we have itemized are those about which we have already had some discussion with the State representatives, or those which we anticipate may possibly be required during the Forecast periods.

The estimated costs shown in our Budget and Forecasts are as close a figure as we can make at this time, but in some cases are merely preliminary, and where no detailed estimates have been prepared it is so indicated.

We will have appropriations prepared in the usual way for items shown in the Budget for 1932 with the exception of Bridges and Grade Separations, for which appropriations will be prepared as the necessity arises.

Yours truly,

President.

(Copy of Original—Attached to Appropriation No. 5192)

[Telegram]

United States Steel Corporation, Private wire service

114. NEW YORK, *Dec. 1.*

S. M. ROGERS:

YL Nov. 25. Appropriation request USS 5192. Why were we not advised at the time over run became evident.

D. G. KERR.

355 p.

(Copy of Copy—Attached to Appropriation No. 5192)

[Telegram]

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY,
Chicago, Illinois, December 2nd, 1931.

Mr. D. G. KERR,
New York, New York.

Yours first re Appropriation 5192. We expected to strike supply of water at any time and on account of nature of work it was practically impossible to make a close estimate of over run until water was encountered. Believe this was discussed with you.

S. M. ROGERS.

Via USSC Wire.

(Copy of Original—Attached to Appropriation No. 5192)

UNITED STATES STEEL CORPORATION,
71 Broadway, New York, December 9, 1931.

Appropriations; E., J. & E. Ry. Co.

MY DEAR SIR: Elgin, Joliet & Eastern Railway Company appropriation U. S. S.—5192, amount $14,617 (overrun on Appropriation U. S. S.—5016, amount $18,137, recommended February 7, 1928), covering cost of drilling new well, installing pumping machinery and making necessary alterations to pump house at Dyer, Indiana, has been recommended and copy is enclosed herewith.

Kindly acknowledge receipt.

Yours very truly,

(Signed) D. G. KERR,
Vice President.

D
Enc.
To Mr. S. M. ROGERS,
President, Elgin, Joliet & Eastern Railway Co.,
Chicago, Ill.

(Copy of Copy—Attached to Appropriation No. 5192)

G
DECEMBER 11, 1931.

Mr. D. G. KERR,
Vice Pres., U. S. Steel Corporation,
71 Broadway, New York, N. Y.

DEAR SIR: I am in receipt of Appropriation U. S. S.—5192 which has been approved by the Finance Committee, and for which I thank you.

Yours truly,

President.

(Copy of Copy—Auditor's File 103–C General File)

UNITED STATES STEEL CORPORATION,
71 Broadway, New York, April 21, 1932.

Mr. S. M. ROGERS,
President, Elgin, Joliet & Eastern Ry. Company,
Chicago, Ill.

DEAR SIR: Please be advised that on April 19, 1932, the Finance Committee of the Corporation adopted the following resolution:

"* * * that original appropriations for improvements which involve an expenditure of $5,000 or less (maximum heretofore being

$10,000), or any appropriations for overruns, which with the original appropriations do not exceed $5,000, need not be presented to the Finance Committee for consideration."

Under the above ruling the limit of appropriations for improvements which may be entered as "Company" appropriations is reduced from $10,000 to $5,000. However, all Company Appropriations should, as heretofore, be forwarded to the Corporation in accordance with existing practice.

The above resolution is not intended to modify the present procedure with respect to Real Estate purchases, i. e., purchases involving an expenditure of $5,000 or more are subject to recommendation by the Finance Committee before purchase and purchases involving an expenditure of less than $5,000 are subject to the approval of the President or Chairman of the Corporation.

Will you please advise the officials and departments of your company, who may be interested, of the above ruling.

Yours truly,

(Signed) H. L. AUSTIN,
Comptroller.

Approved:

(Signed) W. A. IRVIN,
President.

(Copy of Copy—Auditor's File 103–C General File)

CBM:OL
APRIL 23, 1932.

Mr. H. L. AUSTIN,
Comptroller, U. S. Steel Corporation,
71 Broadway, New York, N. Y.

DEAR SIR: I have your letter of the 21st instant advising of the action of the Finance Committee in connection with appropriations for improvements. We will be governed accordingly.

Yours truly,

President.

cc—Mr. C. G. Holm, Copy of Mr. Austin's letter attached for your information and guidance.

(Copy of Copy—Auditor's File 103–C General File)

UNITED STATES STEEL CORPORATION,
71 Broadway, New York, July 30, 1932.

Mr. S. M. ROGERS,
President, Elgin, Joliet & Eastern Ry. Co.,
Chicago, Ill.

DEAR SIR: Referring to letter dated April 21, 1932, reporting the action taken by the Finance Committee of the Corporation under

date of April 19, 1932, reducing the limit of appropriations requiring recommendation of the Finance Committee from $10,000 to $5,000.

Under date of July 20, 1932, a letter was sent to the accounting officers of the subsidiary companies advising of the recent decision to the effect that all appropriations should hereafter include as a part of the cost the value of second hand material and equipment used. One of the companies has inquired whether the $5,000 limit will now apply to the total amount of each appropriation or whether it will only apply to the cost exclusive of the value of second hand material and equipment used. Please be advised that in future the $5,000 limit will apply to the total amount of each appropriation including the value of second hand material and equipment used. The result will be that certain appropriations heretofore treated as company appropriations will now be classified as appropriations requiring the recommendation of the Finance Committee.

Yours truly,

(Signed) H. L. AUSTIN,
Comptroller.

HLA—So

(Copy of Original—Auditor's File 103–C General File)

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY,
ACCOUNTING DEPARTMENT,
208 South La Salle Street, New York, August 4, 1932.

C. G. HOLM, Ass't General Auditor.

Mr. C. G. HOLM,
Ass't General Auditor, Elgin, Joliet & Eastern Ry. Co.,
Chicago, Ill.

DEAR SIR: I have your letter of July 26, 1932, in regard to circular letter issued by Mr. Austin in regard to handling salvage credits and second-hand material and equipment charges to Property Account on appropriations.

I believe we can meet the requirements of the Corporation's circular letter of July 20, 1932, and at the same time meet the I. C. C. requirements without making a second A. F. E. or appropriation request to cover the write-off. Take your No. 5961 of March 15, 1932, as an example.

So far as the appropriation request is concerned all that was asked for was $672.00: $140.00 for New Property Account and $532.00 for dismantling old Property Account. It is obvious that the distribution of the $672.00 is:

Road	$140.00
Loss on Retired Road and equipment	532.00
Total	672.00

But you have made a part of the $672.00 request a further accounting procedure and short-cut or included therein a write-off entry which has nothing to do with the request for the $672.00.

Now, the Corporation suggests that the distribution be made as above and a memorandum of the write-off entry necessary be made at the left of the appropriation distribution proper as follows:

Write-off:	
Cost of Property Retired	$4,720.00
Less Salvage	3,282.00
Balance—Loss on Retired R. & E.	$1,438.00

It is not material whether you show on this memorandum what accounting disposition was made of the $3,282.00 salvage, i. e., whether charged to Inventory or back into Road Equipment account of reuse through this or some other appropriation, except that when second-hand material is used in any appropriation a memorandum should be made on the appropriation request showing a division of the total amount asked for as between (a) transfer or second-hand value of old facilities, and (b) estimated cost of labor, new material, and expense. (See page 2 of Mr. Austin's letter of July 20, 1932.) But this memorandum has nothing to do with, and is separate from, the distribution shown on page 3 of the appropriation requests.

Yours truly,

(Signed) P. L. FISHER,
General Auditor.

PLF–G

(Copy of Original—Auditor's File 97–B—General File)

TMF–G

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY,
OFFICE OF THE PRESIDENT,
Chicago, Ill., August 25th, 1932.

Mr. C. G. HOLM,
Asst. Gen. Auditor, E., J. & E. Ry. Building.

DEAR SIR: Referring to my letter of December 21st, 1925, addressed to Mr. G. W. Williams in regard to statement showing all charges to appropriations authorized in excess of $10,000.00.

In future will you kindly arrange to have this statement prepared to show charges to appropriations authorized in excess of $5,000.00.

Yours truly,

(Signed) S. M. ROGERS, m.

(Copy of Copy—Auditor's File: Quarterly Forecast of Unexpended Authorized Appropriations)

JANUARY 17, 1933.

Mr. H. L. AUSTIN,
Comptroller, United States Steel Corporation,
71 Broadway, New York, N. Y.

DEAR SIR: Enclosed please find Quarterly Forecast of Amounts unexpended on authorized appropriations as of January 1, 1933.

Yours truly,

Assistant General Auditor.

Enc.
JZ/ADJ

215 *Government's Exhibit E*

[File endorsement omitted.]

IN RE: BANKING AND ACCOUNTING.

UNITED STATES STEEL CORPORATION,
OFFICE OF THE COMPTROLLER,
New York, November 11th, 1901.

Circular

It has been concluded to recommend the settlement through the United States Steel Corporation of commercial accounts arising between the several Constituent and Subsidiary Companies named in the sub-joined outline of the plan.

This plan was fully considered at a recent meeting of the accounting officers of the Constituent Companies, and by them approved.

The plan is as follows:

Scope of Plan

That settlement shall be made through the "United States Steel Corporation Clearance Account" of all bills and accounts rendered or due between the Companies named below for material and supplies purchased and expenses incurred, including payments on iron ore purchase contracts. Also for freight charges on iron ore due to Duluth & Iron Range R. R. Co. and Duluth, Missabe & Northern Railway Co., and transportation charges due to Pittsburg Steamship Company. All other traffic charges and claim accounts due between any of the railroads and other companies named will, however, be excluded.

The Companies whose accounts of the above nature will be settled under this plan are as follows:

Carnegie Steel Co., Carnegie Natural Gas Co., Union Rail Road Co., Pittsburg & Conneaut Dock Co., H. C. Frick Coke Co., Youghiogheny Northern Ry. Co., Youghiogheny Water Co., Mt. Pleasant Water Co., Trotter Water Co., Union Supply Co., Bessemer & Lake Erie R. R. Co., Pittsburg Limestone Co., Minnesota Iron Co., Chandler Iron Co., Minnesota Steamship Co., Minnesota Dock Co., Duluth & Iron Range R. R. Co., Illinois Steel Co., Chicago, Lake Shore & E. Ry. Co., Cundy Iron Co., South West Connellsville Coke Co., Lorain Steel Co., Elgin, Joliet & Eastern Ry. Co., Huron Water Co., National Tube Co., National Tube Works Co., Standard Seamless Tube Co., Benwood & Wheeling Conn. Ry. Co., McKeesport Conn. Ry. Co., American Steel & Wire Co. of N. J., American Steel & Wire Co. of Colorado, American Mining Co., American Coke Co., Pittsburg & Ohio Valley Ry. Co., Northern Liberties Ry. Co., Newburg & South Shore Ry. Co., Waukegan & Miss. Valley Ry. Co., Edgar Zinc Co., Juniata Coke Co., Standard Supply Co. National Steel Co., Chapin Mining Co., Winthrop Iron Co., Continental Coke Co., American Tin Plate Co., American Steel Hoop Co., American Sheet Steel Co., American Bridge Co. of N. Y., American Bridge Co. of N. J., A. & P. Roberts Co., Lake Sup. Consolidated Iron Mines, Duluth, Missabe & Northern Ry. Co., Oliver Iron Mining Co., Pittsburg Steamship Co., Shelby Steel Tube Co.

Some of the accounts between companies which will be excluded are as follows:

All settlements between United States Steel Corporation and Constituent and Subsidiary Companies.

Dividends and Bonded Interest charges due from Subsidiary Companies to their own respective Parent companies.

Existing Balances due between Constituent Companies and their Subsidiary Companies, or between Subsidiary Companies having same Parent company, for advances on General Account for Construction and Working Fund requirements, or Earnings or Moneys deposited by one with another company; also balances which may hereafter arise from these sources.

Commencement of Plan

To begin with the month of November. As hereinafter explained, the plan contemplates settlement on basis of reports rendered by receiving or debtor companies. Therefore, the reports to be rendered for November by such companies should embody all of the creditor companies' bills for November and previous months which shall have been received and checked by debtor up to the time of reporting. No invoices of creditor companies should, under any circumstances, be omitted from the Clearing House returns and reports, when and as soon as they may be checked up and ready for voucher by the debtor company, the intent being that all items shall be reported by the debtor company regardless of its financial condition, as the question of actual payment by the debtor company to the U. S.

Steel Corporation will be a matter of subsequent consideration, and if any company is short of cash, assistance may be given or financing done through the U. S. Steel Corporation rather than by the withholding of payment by the debtor company of bills justly due to another company. Nor should any invoice be held back on account of error in the same, but the amount thereof, less the correction, should be reported.

Procedure

The basis of settlement to be the reports of receiving or debtor companies. The rendering of invoices and bills should be continued as at present. If corrections are made by debtor company on the invoices as rendered, prompt notice thereof should immediately be given the creditor company.

On or before the 8th day of each month each debtor company to forward to each other company a detailed statement (Form U. S. 100) of the credits it may have at that date, for invoices and bills of the creditor company. The debtor company will at the same time forward to the Comptroller of U. S. Steel Corporation on Form U. S. 101, a summary of all the reports rendered on Form U. S. 100; and the total of this report (Form U. S. 101) will constitute the debtor company's credit to the U. S. Steel Corporation Clearance Account. Each company will return Form U. S. 101 to the Comptroller of U. S. Steel Corporation irrespective of whether it has anything to report.

With reference to installments payable under ore purchase contracts: The installments due in any one month should be reported by the debtor company in its accounts for the month preceding that in which it is payable. If any company desires to discount any future installment, it may return same in report Form U. S. 100 for the month in which it wishes to include such settlement, and may deduct therefrom the discount from the date fixed for settlement of clearance accounts for the said month, up to the date such ore installment is payable per contract. In other words, if a company, when it returns Form U. S. 100 for, say, November, concludes it desires to discount an installment payable in January proximo, it should include such installment in November report, less the discount from December 25th to the date said installment is payable.

Invoices not reported by Debtor Company.—Any invoices not received by the Debtor Company at date of rendering Form U. S. 100, or any such invoices which the Debtor has not been able to check up and enter in its statement by the stipulated date, should not be taken up by the Debtor Company in its accounts until the succeeding month, or such time as it does actually receive and check up the material or expense. Until reported by the Debtor Company, the Creditor will consider the amount of any such invoices as "Material in Transit-Constituent Companies" and will so return it in its General Balance Sheet.

Corrections in Invoices.—Any alterations in invoices made by Debtor Companies will, as explained, be immediately reported to the Creditor Company. Such differences will then be subject to the general regulations of the companies concerning the adjudication thereof. Pending such settlement, however, the Creditor Company will carry the amount of the correction in its account against the Debtor Company as a part of the amount to be returned as "Material in Transit." Deductions so made, if subsequently allowed by the Debtor, in whole or in part, will be reported on Form U. S. 100 for the month in which same are adjusted. In reporting these, proper reference should be made to the original invoice from which deduction was made.

Settlements

Notice (Form U. S. 102) will be issued by the Comptroller of U. S. Steel Corporation on the 13th of the month to each company, advising it of its balance in the Clearance Account. The net balance will also be telegraphed as soon as determined.

The date for settlement of Clearance Account balances will be the 25th day of the month succeeding that for which reports are made. Any question of interest which may arise with regard to settlement of balances will be figured as from that date.

The balances in question will be carried to the credit or debit, as the case may be, of the respective companies on the books of U. S. Steel Corporation pending their cash settlement. The cash settle- for these balances not being a matter of accounting, but purely one of financing, will be subject to the control of the respective Treasury Departments in negotiation with the Treasurer of U. S. Steel Corporation.

It will be observed that under the foregoing plan all questions of discounts for settlement of accounts prior to a certain date (except in case of prepayment of ore contract installments) are naturally eliminated, since no transfers of cash will be permissible in payment of accounts included in clearance balances except as provided.

It is requested that interested officials of each Constituent Company, and such of the Subsidiary Companies as are embraced hereunder, will take the necessary steps to insure the commencement of the Plan with November accounts. A supply of Forms U. S. 100 and 101 will be supplied for each company as soon as received from the printer.

In this connection it is pertinent to add that all Inter-Company balances and accounts, which may be excluded from the Clearing House Plan as explained, should still be made to tie up per returns of Debtor and Creditor companies, in accordance with practices heretofore observed, and should be reported specifically in said companies' balance sheets and reports. No change in previous recommendations with respect to showing the balances in question is contemplated in promulgating this Plan.

E. SHEARSON, *Comptroller.*

(Copy of Original—Auditor's File 22-A General)

UNITED STATES STEEL CORPORATION,
Empire Building, New York, June 24th, 1905.

To Treasurers and Accounting Officers of Subsidiary Companies:

We beg to advise you that beginning July 1st proximo, it has been decided to modify the regulations now in force respecting balances due between this Corporation and Subsidiary Companies in "Clearance" and "General" accounts, as follows:

All credit and debit balances carried in "General" account (except certain special items concerning which specific advice will be given) will be transferred on June 30, 1905, to "Clearance" account.

Subsequently to July 1st proximo balances due by the Corporation and theretofore carried in "General" account, but which may not be transferred to "Clearance" account, as above, will be designated on the books and in the returns as "Advance" account.

Hereafter the various current items due between the Corporation and subsidiary companies which may have heretofore been included in "General" account, will be embraced in "Clearance" account, the intention being that this account shall comprehend all items due as indicated other than the following which will be continued in separate accounts, to wit: Dividends declared; Notes Receivable; Special Loans; Accruing Interest on Notes and Accounts Receivable; and Advances. The "Advance" account it is expected will cover certain specific deposits with or by the Corporation which it may be undesirable to include in the "Clearance" account.

The regulation now in force respecting date of settlement of monthly Clearance account balances are hereby modified, and the 20th of the month is fixed for the date of settlement thereof. As heretofore the current month's Clearance balance will be shown in "Clearance" account per books and balance sheet for said month, but any portion thereof not settled promptly on the 20th of succeeding month will become subject to interest charge or credit as follows:

From July 1st proximo interest at the rate of 2½ per cent per annum will be credited and charged by the Corporation on respectively credit and debit balance due in "Clearance" account. Interest will be computed from the dates credits and debits are made on the Corporation's books to "Clearance" account, except, however, that the current month's balance will, for interest purposes, be charged or credited as of the 20th of the succeeding month. This interest will be reported monthly and entered in "Clearance Interest" account, but will be subject to your use only semi-annually, June 30th and December 31st; in case of debit balances due the Corporation for interest, the same will be paid by subsidiary companies semi-annually on dates named.

Interest may be charged or credited on balances carried in Special Loan Accounts, Advance Accounts and Dividend Accounts, as you

may from time to time be specifically advised. The question of charging or crediting interest upon these accounts will be considered with particular reference to the reasons underlying their creation. Interest on Notes Receivable will, of course, be charged according to the terms of the notes.

Monthly statements will be rendered by the Comptroller on the first of each month showing condition on our books of the "Clearance" account, and of the account covering interest on such account. It is requested that you show separately on General Balance Sheet, the "Clearance" account, and the "Clearance Interest Account." As heretofore, accounts for Dividends declared, Notes Receivable, Special Loans, Advances and Interest on Notes will be reported separately in General Balance Sheet.

In respect to the manner of showing in Income or Profit and Loss Accounts the interest on the "Clearance" account: It is recommended that an account be opened as auxiliary to your Profit and Loss Account styled "Interest on U. S. Steel Corporation Clearance Account", and all interest received or paid on such account be included therein; this interest account to be separately stated in General Profit and Loss Account under Other Income items; if the net be a debit show in red ink. As to the credit or charge in Profit and Loss *Account for any interest which may be charged on balances* due between Corporation and Subsidiary Companies and carried in other than "Clearance" account, this should be designated in reports of Profit and Loss so as to indicate just what it may be.

RICHARD TRIMBLE, *Treasurer.*
W. J. FILBERT, *Comptroller.*

[Copy]

UNITED STATES STEEL CORPORATION,
New York, March 17, 1911.

Mr. A. F. BANKS,
President, Elgin, Joliet & Eastern Ry. Co., Chicago, Ill.

DEAR SIR: Referring to your talk with me concerning balance due between E., J. & E. and C., L. S. & E. and the settlement thereof.

As I understand it, the facts are as follows: At January 31, 1911, the C., L. S. & E. owed the E., J. & E. the following amounts:

For Construction formally transferred	$439,824.83	
For Construction not transferred	950,552.45	
Total		$1,390,377.28

Against this the E., J. & E. owes the C., L. S. & E. as follows:

Rental Account	$450,000.00	
Illinois Steel Company	250,000.00	
		700,000.00
Net		690,377.28

I would suggest adjusting the accounts by formally transferring the $950.552.45 to C., L. S. & E. Construction Account. Then liquidate $700,000 of this by wiping out the indebtedness due from

E., J. & E. to C., L. S. & E. and Illinois Steel. The balance then would be subject to the draft of the E., J. & E. Against the C., L. S. & E. in such proportions from time to time as the E., J. & E. may need the money. Of course, if the E., J. & E. does not actually need the cash funds and it is not convenient for the C., L. S. & E. through the Illinois Steel to pay over the funds, the balance can be carried as an asset of the E., J. & E. until such time or times as it must have the cash for its working balances. Of course, if this is done it should be understood that proper interest allowance is to be made in figuring the rental which the E., J. & E. is to pay the C., L. S. & E. in respect of the construction expenditures formally transferred to the C., L. S. & E., but carried as unpaid by the E., J. & E.

Yours truly,

(Signed) W. J. FILBERT,
Comptroller.

(President's File No. 1303)

AFB–M
JANUARY 19, 1914.

Mr. W. J. FILBERT,
Comptroller, United States Steel Corporation,
New York, N. Y.

DEAR SIR: When you were in Chicago it was agreed that the E., J. & E. should voucher in favor of the C., L. S. & E. Road the sum of $1,260,000.00 to cover back dividends of 7% on the capital stock of the Chicago, Lake Shore & Eastern Road. This voucher has been prepared and signed by me, and is being held by the Treasurer not yet having been deposited to the credit of the C., L. S. & E. Road. Personally I think that the deposit should not be made to the credit of the C., L. S. & E. Road until such time as we are ready to declare a dividend on the part of the C., L. S. & E. Road to its stockholders of this amount for the reason that the interest on the same paid by the bank would be paid to the C., L. S. & E. Road, and I think the E., J. & E. Road should have the interest on this deposit until the date of the declaration of the dividend to the stockholders of the C., L. S. & E. Road.

Will you kindly advise me what the instructions from the New York office will be in regard to the C., L. S. & E. Road declaring a dividend covering this amount due from the E., J. & E. Road to the C., L. S. & E., and on what date it is desired that we shall have a meeting of our Board of Directors for the purpose of declaring such dividend.

Will you kindly advise me and oblige?

Yours very truly,

President.

[Copy.]

AFB–M
JULY 21, 1914.

Mr. W. J. FILBERT,
Comptroller, United States Steel Corporation,
New York, N. Y.

DEAR SIR: Referring to Judge Gary's letter to Mr. Buffington and myself, June 27th, concerning modification of lease between the C., L. S. & E. and the E., J. & E., and payments of amounts due under lease covering settlements to December 1st, 1913. There is due on the $600,000.00 per year rental, $280,000.00; Interest on construction expenditures, $ 99,256.60; Rental, 7% on C., L. S. & E. Capital stock, $1,575,000.00, Rental, 18/28's of surplus, $751,471.63, less C., L. S. & E. property abandoned, $119,800.80; total rental 18/28's of surplus, $631,670.83, making total amount due C., L. S. & E. December 1, 1913, $2,685,927.43.

We have cash on hand in Chicago and other banks, Chicago District, approximately $3,000,000.00 today. If we pay at once all indebtedness to the C., L. S. & E. we will have no working fund in Chicago. Our general balance sheet shows funds we have in New York. Do you think under the circumstances we should at this time make payments of all moneys due as of December 1st? If not, what items should we pay? I think it would be unfortunate to have our working balance in Chicago below $1,500,000.00 at any one time. As you are aware, we frequently have large traffic balances that must be settled when drafts are presented.

Will you kindly wire me tomorrow on receipt of this letter your views concerning the same?

Yours very truly,

President.

AFB–C
JULY TWENTY-FOURTH, 1915.

Mr. W. J. FILBERT,
Comptroller, United States Steel Corporation,
New York, N. Y.

DEAR SIR: Under the terms of the Amended Lease between the C., L. S. & E. Ry. Co. and the E., J. & E. Ry. Co., Article 3, referring to Section 6 of the original agreement, Paragraph F, Page 7, of the Amendment provides: That

"As of June 1st of each year, after the 31st day of December 1913 an estimate shall be made of the amount of rentals which have accrued during the preceding six months to the said Chicago Company under the provisions of this agreement, except as to the items of rental covered by Paragraphs numbered 2nd and 3rd in this Section Sixth, and payment shall be made on or before the 30th

day of June in such year, on account to said Chicago Company of the amount of rental which such estimate shows has accrued."

I think we should immediately make settlements between the C., L. S. & E. Ry. Co. and the E., J. & E. Ry. Co. and pay over such sums of money to the C., L. S. & E. Ry. Co. as are due, in accordance with the terms of the contract.

Is it the desire of the New York office that we should at once make these payments, and is it their further desire that we should have the C., L. S. & E. Ry. Co. declare a dividend to its stockholders covering such amount? I can see no advantage in transferring the funds from the E., J. & E. Ry. Co. to the C., L. S. & E. Ry. Co. unless the C., L. S. & E. Ry. Co. desires to immediately make use of the same

Will you kindly advise me what the suggestions of the Corporation are in this matter?

Yours truly,

(Sgd.) A. F. BANKS,
President.

[Copy]

(File #1600–4)

AFB; C
JANUARY 27TH, 1916.

MR. RICHARD TRIMBLE,
Treasurer, United States Steel Corporation,
New York, N. Y.

DEAR SIR: The Chicago, Lake Shore & Eastern Railway Company has on deposit in the Continental, Commercial National Bank, $1,188,233.07.

This Road requires but a very small working fund, and if it meets with your approval, I would like to transfer $1,150,000.00 to the United States Steel Corporation Account with the Continental, Commercial National Bank from the C., L. S. & W. Ry. Co.'s funds and show in our assets United States Steel Corporation Advance Account. We have done this in the past and believe it would be advisable under all circumstances to have this cash deposit with the Corporation instead of carrying it in the C., L. S. & E. Ry. Co.'s cash account.

Will you kindly advise if this is satisfactory to you? If so, I will arrange to have the transfer made.

Yours truly,

President.

[Copy]

(File #1600–4)

UNITED STATES STEEL CORPORATION,
New York, January 29, 1916.

Mr. A. F. BANKS,
President, Chicago, Lake Shore and
Eastern Railway Company.
208 South LaSalle St., Chicago, Ill.

Financial Matters

DEAR SIR: Your letter of January 27th is received. We have taken the matter referred to by you up with the Comptroller, and will be glad to have you transfer $1,150,000, to credit of United States Steel Corporation in Continental and Commercial National Bank of Chicago, the same to be credited by United States Steel Corporation, to C., L. S. & E. Ry. Co.'s Advance Account.

Yours truly,

(S.) H. G. HAY,
Assistant Treasurer.

[Copy]

(File #1600–4)

AFB:C
JANUARY 31, 1916.

Mr. F. W. KOONTZ,
Treasurer, E., J. & E. Ry. Co. Building.

DEAR SIR: We have to the credit of the Chicago, Lake Shore & Eastern Railway Company $1,188,233.07 on deposit in the Continental Commercial National Bank of Chicago, and I wish you would please arrange to transfer $1,150,000.00 to the credit of the United States Steel Corporation in the Continental and Commercial National Corporation to the C., L. S. & E. Ry. Co.'s Advance Account.

Will you kindly notify Mr. H. G. Hay, Assistant Treasurer, United States Steel Corporation, New York, when this transfer is made.

Yours truly,

President.

cc—to Mr. F. W. Sutton.

(President's File No. 1600)

UNITED STATES STEEL CORPORATION,
New York, New York, September 15, 1916.

Mr. A. F. BANKS,
President, Elgin, Joliet & Eastern Ry. Co.
Chicago, Illinois.

DEAR SIR: I received with your pencil memorandum of August 15th copy of letter addressed you under date of August 11th by Mr. Koontz concerning the organization and conduct of affairs in the Treasurer's Department. We have looked the same over very carefully and do not see that it calls for any particular comment or criticism by us. Everything appears to be in very good shape. We notice, of course, that the permanent balances which are being carried in the Joliet, South Chicago, and Gary banks aggregate over $500,000 as compared with about $300,000 which was carried in similar accounts two years ago when Mr. Austin made an examination of your Company's Treasury and Accounting Departments. It is our understanding that on these balances interest at the rate of 2½% per annum is allowed, but that the real purpose of keeping the balances there is to compensate the banks, through whatever they may make out of the deposit over and above the 2½% they allow you, for their work in paying your pay checks. Undoubtedly you have found it desirable or necessary to permanently lock up this much additional money in the banks in question in order to satisfactorily meet the situation. The question of compensating the banks for services rendered on the lines stated by carrying large permanent balances with them in lieu of really paying them what their services are worth, is, of course, a two sided one. Assuming a company has ample cash resources to enable it to obtain the result it desires through making these deposits, I presume it is the cheaper plan to the Company. If the Company was, however, borrowing additional funds at higher interest rate or issuing capital on which a higher rate of dividend was paid, I am not sure that it would be the economical plan. But after all, the question is one outside of my prerogative. It is an Executive and Treasury Department matter.

Yours truly,

(Signed) W. J. FILBERT,
Comptroller.

B.
(Copy.)

(President's File No. 1600)

AFB–A

SEPTEMBER 18TH, 1916.

Mr. W. J. FILBERT,
Comptroller, United States Steel Corporation,
New York, New York.

DEAR SIR: Replying to your favor to the 15th inst., concerning balances in the Joliet, South Chicago, and Gary Banks.

Our Company receives the same interest, namely, 2½% per annum on all funds deposited in these banks, just the same as we would receive from the Continental & Commercial. The balances that we carry with these banks is a compensation to them for their work in paying our checks. The Company thus saves any compensation we might have to pay them and at the same time is receiving the same interest as we would receive from anyone else. This arrangement is subject to cancellation at any time, but so long as we are not borrowers of cash, believe it is a profitable arrangement and we also feel that these three banks are safe institutions in which to deposit our funds. As you are aware, the Directors of the Gary and South Chicago banks are principally officials of the Corporation and give these banks a great deal of their personal attention. Our General Superintendent McManus is Vice President of the Joliet Bank and Mr. Mathias, General Superintendent of the Illinois Steel Company at Joliet, is one of the Directors. We therefore feel that very close supervision is given to all three of these banks.

Yours very truly,

President.

[Copy.]

[Copy]

(File #1600–4)

UNITED STATES STEEL CORPORATION,
OFFICE OF THE COMPTROLLER,
New York, May 14, 1921.

Mr. A. F. BANKS,
President, Elgin, Joliet & Eastern Ry. Co.,
Chicago, Ill.

DEAR SIR: I enclose copy of letter which I have just addressed Judge Reed. When you get your money from the Government it seems to Mr. Fisher and me that it would be advisable for you to observe the plan outlined herein for segregating the assets covering the proportion of excess profits payable to the Government of

the reserve fund provided by the Transportation Act. Of course, as to this latter the Act is mandatory that the assets shall be segregated.

Would be very glad to receive your advices as to whether you are agreeable to this plan. Please note it has been approved by Judge Gary and has been fully adopted by Messrs. McGonagle and House.

Yours truly,

W. J. FILBERT, *Comptroller.*

B.

(President's File No.)

UNITED STATES STEEL CORPORATION,
OFFICE OF THE COMPTROLLER,
New York, May 14, 1921.

File #1600–4, Copy

Mr. J. H. REED,
President, Bessemer & Lake Erie R. R. Co.,
Pittsburgh, Pa.

DEAR SIR: Referring to our brief talk the other day at which you stated you had received check in final settlement from the United States Railroad Administration and the remarks which followed as to uses which this money or part of it might be put to.

You are familiar, of course, with the entries which have been made by your Auditor after conference with us setting up in separate liability accounts:

Approximate accrued liability due United States under Transportation Act for proportion of excess profits for 1920 above 6% on Investment	$1,000,430.21
and	
Reserve Fund under Transportation Act	1,000,430.21

I have suggested to Judge Gary, and he has concurred subject to your being agreeable, that there shall be taken from the cash funds received from the Railroad Administration the respective amounts and the same applied as follows:

1. There shall be opened a special deposit account in a Pittsburgh bank to be designated and transferred to it the $1,000,430.21 first above mentioned. This deposit to be held and drawn upon only for paying the Government if and when it is decided the excess referred to shall be so paid over. Of course, interest allowance would be obtained on this deposit and at a rate probably considerable in excess of interest allowed on current checking account.

2. That the $1,000,430.21 representing *representing* reserve fund under the Transportation Act be invested in United States Liberty Loan Bonds, the amount of bonds necessary to be purchased to absorb the amount to be acquired from the U. S. Steel Corporation

(which will sell the same for this purpose) at a price to be agreed upon which will probably be the prevailing market price.

We feel there can be no objection to the Investment of the reserve fund in United States bonds, as surely the company would be remiss if it did not invest in an interest bearing obligation the fund in question pending its being required.

I might add that both the Duluth & Iron Range and the Duluth, Missabe & Northern Companies have already followed the above plan in respect of the estimated cash which they may be required to pay over to the Government in excess of profits above 6% and haave invested the amount of the reserve fund called for under the Transportation Act in Liberty Loan Bonds.

I would appreciate your advising me if you see any objection to this plan and if not, indicate in what Pittsburgh bank you recommend opening the special deposit account. And assuming you are agreeable to investing the reserve fund in Liberty Bonds, Mr. Murray will advise you relative to the purchase of the same from us. You probably will feel it is advisable to have your Directors authorize the purchase of the bonds for investment of the reserve fund.

Upon it being decided that you will adopt the plan outlined, we will address Mr. McKalip concerning any special accounting which may be desirable as it seems to us in connection with this transaction.

Of course, we understand that the amounts which have been set up in the accounts for the liability due the Government and the amount of the reserve fund are estimated and subject to change. But we think this ought not to be a reason for not making the segregation of the assets in the manner outlined.

Yours truly,

Comptroller.

[Copy]

(File No. 1600–4)

UNITED STATES STEEL CORPORATION,
OFFICE OF THE COMPTROLLER,
New York, August 5, 1921.

Mr. A. F. BANKS,
President, Elgin, Joliet & Eastern Railway Company,
Chicago, Ill.

DEAR SIR: Referring to your letter of the 2nd inst. in regard to segregating assets to represent the accrued liability for 1920 under the Transportation Act and the reserve fund covering the company's proportion of the excess earnings. We feel the same plan should be followed in your company as our other roads have observed.

To this end Mr. Murray advises the U. S. Steel Corporation will sell the E., J. &. E. as of August 10th, 1921—$363,700 par value of 4¼% Fourth Liberty Loan Bonds $87.68 and accrued interest from

April 15, 1921, making total cost of $323,833.41, as per memorandum bill to G. W. W. herewith. If this is agreeable to you please have Mr. Williams draw voucher for the $323,833.41 and remit the amount to the Corporation so as to reach here by August 10th, asking Mr. Murray at the same time to furnish your company with a certificate to the effect that the Corporation is holding as custodian for the E., J. & E. Ry. Company the $363,700.00 of par value of bonds in question.

We also recommend that you open a special deposit account in the Continental and Commercial Bank in name of "Elgin, Joliet & Eastern Railway Company—Special Deposit Account", in which should be deposited the amount of $323,872.83 to cover the accrued liability payable the Government under the Transportation Act 1920. As this deposit will probably remain for some time, Mr. Murray suggests that arrangements should be made for a little better rate of interest than obtained on your current working account. For similar deposits which have been made by other railroads, at least 3% has been secured and in one case 4% will be allowed if the amount remains on deposit for more than six months.

Arrangements should also be made to have whatever interest is allowed credited to your regular working account and not to this special deposit account on which it accrues as there is no need to increase the deposit over the estimated liability. Whatever interest is thus received should be taken up to credit of current Income Account.

Mr. Williams should also arrange to accrue monthly the interest on the Liberty Bonds purchased with the reserve fund, commencing with August 11th, 1921, charging same to the new bond asset account and crediting current Income Account.

At October 15th, 1921, the interest received should be credited to the asset account which will reduce it to $318,892.16 somewhat under the required amount of reserve but the accrued interest will again soon make the fund whole and we do not think there will be any criticism of this temporary shortage in the segregated amount.

The new bond asset account should appear in balance sheet Account No. 721 under a sub-caption of "Transportation Act Fund", and the bonds should be exhibited on the monthly U. S. Government Bond Statement to New York office showing the par, cost, accrued interest, and total of cost and interest the same as is done for other Governmental Bonds owned.

I think it will be all right to have your Directors approve the investment made by the officers in Liberty Loan Bonds at their next meeting. I assume this meeting will be held within the course of a few months.

Yours truly,

W. J. FILBERT, *Comptroller.*

Bi
Encl.
Copies to Messrs.: G. W. Williams, F. L. Koontz, T. Murray.

[Copy]

(File No. 1600–4)

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY,
Chicago, Jan. 17, 1932.

Memorandum for Mr. A. F. Banks

Payment of rental of $2,410,029.97 to Chicago, Lake Shore and Eastern Ry. Co. has been made to-day by draft on United States Steel Corporation, E., J. & E. Ry. Co. Advance Account, in favor of the C., L. S. & E. Ry. Co., and draft endorsed to United States Steel Corporation for credit to Chicago, Lake Shore and Eastern Ry. Co. Advance Account.

The cash now on deposit in New York in Advance Account is as follows:

E., J. & E. Ry. Co	$2,490,822.00
C., L. S. & E. Ry. Co	4,833,720.26

(S.) F. L. KOONTZ,
Treasurer.

[Copy]

(Auditor's file 97–A–General File)

File CGH–228
JUNE 21ST, 1922.

Mr. W. FILBERT,
Comptroller, United States Steel Corporation,
Empire Building, New York City, New York.

DEAR SIR: Referring to your letters of the 13th inst., relative to proof copy of figures for Poor's Manual for the E., J. & E. Ry. Co. and the C., L. S. & E. Ry. Co., for the year 1921, and in reply I beg to confirm advice in my telegram of June 19th, that the returns in Poor's Manual each year are wholly composed from the annual reports to stockholders and consequently same do not agree with the regular reports we send you monthly, as the latter reports are made up in accordance with actual figures on our general ledger at the close of each month, whereas the annual reports to the stockholders include divers adjustments and combinations of figures which have been deemed suitable for the purpose of the annual report.

In regard to item "U. S. Steel Corporation Advance Account" being included as cash, balance sheet account No. 708, I beg to say that this is the classification under which this item has been reported in our annual report to the Interstate Commerce Commission, and is also in accordance with our annual report to stockholders. We have always considered this as a cash deposit, subject to withdrawals according to our needs, although draft on this deposit has always

been followed by separate communication from our Treasurer. The same holds good in the case of additional deposits.

Yours truly,

Assistant General Auditor.

cc Mr. P. L. Fisher.

(Copy of copy—Auditor's File 97-A-General File)

File CGH-228
JUNE 30TH, 1922.

Mr. P. L. FISHER,
General Auditor, Building.

DEAR SIR: Replying to your favor of the 27th instant which refers to my letter of June 21st to Mr. Filbert, a copy of which was sent to you, and concerns differences between returns given to Poor's Manual, our published reports, and our monthly statement, we furnish your office, I beg to say that I fully agree that there is no good reason apparently why these reports should not agree in such essentials as, for example, mileage of tracks, etc. Accordingly, we have so arranged that in future this will be done, including reports to Mr. Austin.

Relative to classification of the item "U. S. Steel Corporation—Advance Account" which you point out that we at one time included in 715—Miscellaneous Accounts Receivable, I find that the change was made in our reports to the Interstate Commerce Commission from being included in 708—Cash, in 1916. We discontinued this classification in making our reports for 1917. However, I am rather in doubt whether this deposit really should belong in account No. 715. The amount of this deposit at present is $7,465,822.00 and while the sum total in Account No. 715, Miscellaneous Accounts Receivable, at present is only $428,859.79, it would seem that to add such a large sum as the present balance in Advance Account to our Accounts Collectible might not result in a desirable showing. Of course, I may be wrong about this, but before making the transfer in our June 1922 Accounts, I believe it is expedient to comment on this phase of the matter. I would, in this connection, call your attention to Account No. 712, Loans and Bills Receivable, as one that may possibly be considered in this instance. I will admit that the text under this account in the classification does not fit the situation altogether as well as Account 708—Cash, but neither does it seem that unless the amount involved was rather small and insignificant that it should properly belong in "Miscellaneous Accounts Receivable."

Nevertheless, I realize that as you state, this money is not "free" cash as it is not subject to draft, without notification and consent, I will arrange to make the transfer suggested by you, if, after read-

ing the foregoing you are still of the same opinion as before in this matter.

Kindly advise further, and oblige,

Yours truly,

Assistant General Auditor.

ADJ

[Copy]

(Treasurer's File 33–12)
ELGIN, JOLIET & EASTERN RY. CO.,
ACCOUNTING DEPARTMENT,
Chicago, May 5, 1926.

File No. GEC–11–493

Mr. P. L. FISHER,
Assistant Comptroller, United States Steel Corporation,
Empire Building, New York, N. Y.

DEAR SIR: As requested in your letter of April 28th, 1926, we have retyped the summary statements and a carbon copy of each is enclosed herewith for your file.

I agree with your argument that one could not possibly carry on operations with the average amount shown, as it seems to me that it is necessary for a treasurer to have on hand sufficient cash to meet the maximum decrease in cash shown by previous experience. How large a decrease will actually develop is something which I understand is hard to foretell, as it depends on how fast the payments come in against the receipts. Consequently, I believe we are justified in claiming an amount somewhat in excess of the maximum decrease shown for the year, as we have to keep on deposit in Joliet, Gary, South Chicago, and Rossville an amount sufficient to at all times take care of our pay rolls, and in order that such payments may be made without expense to us, an additional amount in excess of the amount necessary to pay such rolls is constantly in their hands. Amounts are as shown below:

Joliet	$170,000.00
Gary	220,000.00
South Chicago	120,000.00
Rossville	2,500.00
	$512,500.00

The above is, of course, entirely independent of our General Account maintained in the Continental and Commercial National Bank at Chicago.

I understand there is no specified amount for our Chicago deposit, as we have always carried a large deposit there which compensates the bank for handling our account. However, were we not in a position to maintain this large deposit, undoubtedly they would require a specified amount also.

While, of course, we are allowed interest on these deposits, the rate is very low and we would not leave such large sums on these low rates of interest were it not necessary for operating purpose. It, therefore, appears to me that we should be allowed some addition to our working capital to compensate for these large deposits.

Yours truly,

Assistant General Auditor.

GEC: ASM
CC Mr. F. L. KOONTZ,
Treasurer, Building.

UNITED STATES STEEL CORPORATION,
OFFICE OF THE TREASURER,
71 Broadway, New York, December 18th, 1928.

Mr. F. L. KOONTZ,
Treasurer, Elgin, Joliet and Eastern Railway Compa.
208 South La Salle Street, Chicago, Illinois.

Financial Matters

DEAR SIR: Please deposit to credit United States Steel Corporation in Continental National Bank and Trust Company two million dollars on or before December 24th. The amount will be credited to you in Advance Account.

Yours truly,

(Signed) G. L. EDWARDS,
Treasurer.

UNITED STATES STEEL CORPORATION,
OFFICE OF THE TREASURER,
71 Broadway, New York, June 29, 1929.

Mr. F. L. KOONTZ,
Treasurer, Elgin, Joliet and Eastern Railway Company,
208 South La Salle Street, Chicago, Illinois.

Financial Matters

DEAR SIR: Please deposit to credit United States Steel Corporation in Continental Illinois Bank and Trust Company five hundred thousand dollars on or before July 6th. The amount will be credited to you in Advance Account.

Yours truly,

(Signed) J. H. GEWECKE,
Assistant Treasurer.

UNITED STATES STEEL CORPORATION,
OFFICE OF THE TREASURER,
71 Broadway, New York, August 21, 1929.

Mr. F. L. KOONTZ,
Treasurer, Elgin, Joliet and Eastern Railway Company,
208 South La Salle Street, Chicago, Illinois.

Financial Matters

DEAR SIR: Please deposit to credit United States Steel Corporation in Continental Illinois Bank and Trust Company one million dollars on or before August 27th. The amount will be credited to you in Advance Account.

Yours truly,

(Signed) G. L. EDWARDS,
Treasurer.

UNITED STATES STEEL CORPORATION,
OFFICE OF THE TREASURER,
71 Broadway, New York, September 16th, 1929.

Mr. F. L. KOONTZ,
Treasurer, Elgin, Joliet and Eastern Railway Company,
208 South La Salle Street, Chicago, Illinois.

Financial Matters

DEAR SIR: Please deposit to credit United States Steel Corporation in Continental Illinois Bank and Trust Company one million dollars on or before September 23rd. The amount will be credited to you in Advance Account.

Yours truly,

(Signed) J. H. GEWECKE,
Assistant Treasurer.

UNITED STATES STEEL CORPORATION,
OFFICE OF THE TREASURER,
71 Broadway, New York, October 14, 1929.

Mr. F. L. KOONTZ,
Treasurer, Elgin, Joliet and Eastern Railway Company,
208 South La Salle Street, Chicago, Illinois.

Financial Matters

DEAR SIR: Please deposit to credit United States Steel Corporation in Continental Illinois Bank and Trust Company one million dollars on or before October 21st. The amount will be credited to you in Advance Account.

Yours truly,

(Signed) G. L. EDWARDS,
Treasurer.

[Copy]

(Treasurer's File 33–8)

10–17–1929.

EB–34166–33–8

Mr. G. L. EDWARDS,
Treasurer, United States Steel Corporation,
71 Broadway, New York, N. Y.

DEAR SIR: Confirming wire of to-day, I wish to advise that we have to-day deposited in the Continental Illinois Bank and Trust Company, to the credit of the United States Steel Corporation, $1,000,000.00 for credit Elgin, Joliet and Eastern Railway Company, Advance Account.

Enclosed please find herewith duplicate deposit ticket to cover.

Yours truly,

Treasurer.

J
Enc.

[Copy]

(Treasurer's File 33–8)

UNITED STATES STEEL CORPORATION,
71 Broadway, New York, October 17, 1929.

Mr. F. L. KOONTZ,
Treasurer, Elgin, Joliet and Eastern Railway Company,
Chicago, Illinois.

DEAR SIR: We acknowledge receipt of the following remittance which has been credited as stated below.

Date: October 17.

Amount: $1,000,000.00 (Credited in Continental Illinois Bank and Trust Company, Chicago, as per advice of October 17).

Account of: Advance Account.

Yours truly,

(Signed) J. H. GEWECKE,
Assistant Treasurer.

(Copy of carbon copy in Treasurer's file 16–1)

FEB. 20, 1931.

Mr. G. L. EDWARDS,
Treasurer, United States Steel Corporation,
71 Broadway, New York, N. Y.

DEAR SIR: Complying with your request of the 16th inst., I beg to hand you herewith statement of our depositories for the Elgin, Joliet and Eastern and Chicago, Lake Shore and Eastern Railways.

We have to-day received advice from the Continental Illinois Bank and Trust Company that the rate of interest on daily balances

has been reduced to 1% effective February 20, 1931. We have not to date received advice from the other banks that the interest rate will be reduced.

Referring to the approximate maximum balance carried in each pay roll or working fund account, I beg to advise that we maintain at all times the following balances:

Joliet National Bank	$150,000.00
Gary State Bank	200,000.00
So. Chicago Savings Bk	150,000.00
First National Bank (Rosv)	2,500.00
Working Fund	1,500.00

These balances have been maintained for a great number of years to compensate the banks for cashing our pay and time checks, and the balances indicated above were authorized by the Board of Directors. With respect to the Joliet National Bank, Gary State Bank and South Chicago Savings Bank, we also maintain $20,000.00 additional for the purpose of cashing our pay and time checks between pay days, and on our regular pay days there is transferred from our General Account in Chicago to meet our pay rolls approximately $170,000.00 to the Joliet National Bank, $105,000.00 to the Gary State Bank, $35,000.00 to the South Chicago Savings Bank, and $2,500.00 to the First National Bank of Rossville, which when added to the balances maintained as stated above, would be our approximate maximum balance for a few days while checks are being cashed.

I trust the above information and the statement enclosed herewith will give you the information you desire.

Yours truly,

Assistant Treasurer.

(Copy of Copy—Treasurer's File 33–8)

EB–40360–33–8

NOVEMBER 24, 1931.

Mr. G. L. EDWARDS,
Treasurer, United States Steel Corporation,
71 Broadway, New York, N. Y.

DEAR SIR: Confirming wire to-day, I wish to advise that we have deposited in the Continental Illinois Bank and Trust Company for credit United States Steel Corporation $70,000.00 E., J. & E. Ry. Advance Account.

For your information beg to advise that of the above amount $35,000.00 was transferred from South Chicago Savings Bank, and $35,000.00 from Gary State Bank. There will be an additional $35,000.00 transferred from each of the above banks on or about December 8th. This will then leave a balance at the South Chicago Savings Bank of $100,000.00, and at the Gary State Bank of $150,000.00.

This balance will be increased for a few days by deposit of pay roll funds, which will be depleted in the course of a week.

We trust that this matter has been handled to your entire satisfaction.

Yours truly,

Treasurer.

J
Enc.

(Copy of Original—Treasurer's File 33–8)

UNITED STATES STEEL CORPORATION,
New York, November 25, 1931.

Mr. EDW. BEECROFT,
Treasurer, Elgin, Joliet and Eastern Ry. Co.,
208 South La Salle St., Chicago, Ill.

DEAR SIR: Receipt is acknowledged of your letter of the 24th instant (No. EB–40360–33–8), confirming your deposit of $70,000 in the Continental Illinois Bank & Trust Company for credit of United States Steel Corporation.

We note that of the above amount $35,000 was transferred from the South Chicago Savings Bank and $35,000 from Gary State Bank and that an additional $35,000 will be transferred from each of these banks on or about December 8th.

This matter has been handled to our entire satisfaction.

Very truly yours,

(Signed) G. L. EDWARDS,
Treasurer.

[Copy]

(Treasurer's File 33–8)

[Telegram]

CHICAGO, *Dec. 8, 1931.*

G. L. EDWARDS,
Treasurer, U. S. Steel Corpn.,
New York, N. Y.:

We have to-day deposited in Continental Illinois Bank and Trust Co. to credit U. S. Steel Corpn. $70,000.00 for credit E., J. & E. Ry. Advance Account.

EDW. BEECROFT, *Treas.*

11:10 A. M.

(Copy—Treasurer's File 33–8)

EB–40460–33–8.
DECEMBER 8, 1931.

Mr. G. L. EDWARDS,
Treasurer, United States Steel Corporation,
71 Broadway, New York, N. Y.

DEAR SIR: Confirming wire of today, I wish to advise that we have deposited in the Continental Illinois Bank and Trust Company, for credit United States Steel Corporation, $70,000.00 E., J. & E. Ry. Advance Account. Duplicate deposit ticket is enclosed herewith.

This transfer of funds refers to my letter of November 24th, and completes the transaction as agreed to when you were here in Chicago.

The average daily balance that we will endeavor to maintain at the South Chicago Savings Bank will now be $100,000.00 instead of $170,000.00, and at the Gary State Bank $150,000.00 instead of $220,000.00.

Yours truly,

Treasurer.

J.
Enc.

[Copy]

(Treasurer's File 33–8)

UNITED STATES STEEL CORPORATION
71 Broadway, New York, December 8, 1931.

Mr. EDW. BEECROFT,
Treasurer, Elgin, Joliet and Eastern Railway Company,
Chicago, Illinois.

DEAR SIR: We acknowledge receipt of the following remittance which has been credited as stated below.

Date: December 8.

Amount: $70,000.00 (Credited in Continental Illinois Bank and Trust Company, Chicago, as per advice of December 8).

Account of: Advance Account.

Yours truly,

(Signed) G. L. EDWARDS,
Treasurer.

(Copy of Pencil Memorandum—Treasurer's File 33–10)

FEB. 15, 1932.

Mr. EDWARD BEECROFT,
Treasurer, Building.

DEAR SIR: Please remit to U. S. Steel Corporation $55.321.97 in settlement of Clearance Account for January 1932.

Yours truly,

(Signed) C. G. HOLM,
Assistant General Auditor.

(Copy of Copy—Treasurer's File 33–10)

HL–33–10.
FEBRUARY 15, 1932.

Mr. G. L. EDWARDS,
Treasurer, United States Steel Corporation,
71 Broadway, New York, N. Y.

DEAR SIR: I wish to advise that we have to-day deposited in the Continental Illinois Bank and Trust Company, to the credit of the United States Steel Corporation, the sum of $55,321.97, covering Clearance Account for the month of January 1932.

Enclosed duplicate deposit ticket, also receipt, which please sign and return.

Yours truly,

Treasurer.

J
Enc.

[Copy]

(Treasurer's File 33–8–)

EB–33–8
MARCH 10, 1932.

Mr. G. L. EDWARDS,
Treasurer, United States Steel Corporation,
71 Broadway, New York, N. Y.

DEAR SIR: Following our usual practice during the month of March, we intend transferring in the usual manner the funds from the account of the Elgin, Joliet & Eastern Railway Company to the account of the United States Steel Corporation, in the Continental Illinois Bank and Trust Company, for credit of Advance Account of that road.

If this meets with your approval, will you please advise.

Yours truly,

Treasurer.

[Copy]

(Tre'surer's File 33–8)

UNITED STATES STEEL CORPORATION,
New York, March 12, 1932.

Mr. EDW. BEECROFT,
Treasurer, Elgin, Joliet & Eastern Railway Company,
208 South La Salle Street, Chicago, Illinois.

DEAR SIR: Receipt is acknowledge of your letter of the 10th instant, advising that following your usual practice during the month of March, you intend transferring funds from the account of the Elgin, Joliet & Eastern Railway Company to the account of the United States Steel Corporation, in the Continental Illinois Bank and Trust Company. Your proposed action meets with our approval and when the transfer has been made will credit the Elgin, Joliet & Eastern Railway Company in advance account.

Yours very truly,

(Signed) J. H. GEWECKS,
Assistant Treasurer.

[Copy]

(Treasurer's File 33–8)

UNITED STATES STEEL CORPORATION,

EB–33–8
MARCH 31, 1932.

Mr. G. L. EDWARDS,
Treasurer, United States Steel Corporation,
71 Broadway, New York, N. Y.

DEAR SIR: Confirming wire to-day, I wish to advise that we have to-day deposited in the Continental Illinois Bank and Trust Company, to the credit of the United States Steel Corporation, $800,000.00 for credit Elgin, Joliet and Eastern Railway Company, Advance Account.

Enclosed please find herewith duplicate deposit ticket to cover.

Yours truly,

Treasurer.

J
Enc.

[Copy]

(Treasurer's File 33–8)

UNITED STATES STEEL CORPORATION,
71 Broadway, New York, March 31, 1932.

Mr. EDW. BEECROFT,
Treasurer, Elgin, Joliet and Eastern Railway Company,
Chicago, Illinois.

DEAR SIR: We acknowledge receipt of the following remittance which has been credited as stated below.

Date: March 31.

Amount: $800,000.00 (Credited in Continental Illinois Bank and Trust Company, Chicago, as per advice of March 31.)

Account of: Advance Account.

Yours truly,

(Signed) G. L. EDWARDS.
Treasurer.

[Copy]

(Treasurer's File 33–8)

EB–33–8
APRIL 2, 1932.

Mr. G. L. EDWARDS,
Treasurer, United States Steel Corporation,
71 Broadway, New York, N. Y.

DEAR SIR: Confirming wire, will you please arrange to transfer on Monday, April 4th, to the Continental Illinois Bank and Trust Company, for our account $500,000.00?

I am enclosing herewith draft No. 872, drawn to our order for the above amount, drawn on you, which amount is to be charged to our Advance Account. Please note that draft has been properly endorsed.

Yours truly,

Treasurer.

J
Enc.

[Copy]

(Treasurer's File 33–8)

UNITED STATES STEEL CORPORATION, PRIVATE WIRE SERVICE

210 NEW YORK, *Apr. 4, 1932.*

EDW. BEECROFT:

Y. T. We have today made requested Transfer to Continental Ill. Bank and Trust Co. for account E., J. & E. Ry. Co.

G. L. EDWARDS.

1005 a. m.

(Copy of Pencil Memorandum—Treasurer's File 33–10)

MAY 16, 1932.

Mr. E. BEECROFT,
Treasurer, Building.

DEAR SIR: Please draw draft on U. S. Steel Corporation for $4,398.34 in settlement of Clearance Account for April 1932.

Yours truly,

(Signed) C. G. HOLM. F.
Ass't General Auditor.

(Copy of Copy—Treasurer's File 33–8)

HL–33–8
33–10
MAY 16, 1932.

Mr. G. L. EDWARDS,
Treasurer, United States Steel Corporation,
New York, N. Y.

DEAR SIR: The Clearance Account for April 1932 shows a balance in our favor of $4,398.34. Inasmuch as this amount is not needed, we will leave it with you for our credit.

We enclose our draft No. 878 for like amount, payable to the order of this company and drawn on you, which covers the April Clearance Account. We have endorsed this draft, payable to the United States Steel Corporation, and would be pleased to have you credit our Advance Account with the amount of this draft.

Yours truly,

Treasurer.

RW
Encl.

(Copy of Original Circular—Treasurer's File 16–1)

UNITED STATES STEEL CORPORATION,
OFFICE OF THE TREASURER,
71 Broadway, New York, June 10, 1932.

Mr. EDW. BEECROFT,
Treasurer, Elgin, Joliet & Eastern Ry. Co.,
208 So. La Salle Street, Chicago, Ill.

Corporation and Subsidiary Company Banks

DEAR SIR: We are making up a new list of the depositories of the Corporation and its subsidiary companies.

Enclosed you will find a form in duplicate on which please list the names of all the banks with which you are now carrying accounts. Upon completion of the list, return one form to us and keep the other for your own use.

In the even of any change, we should be notified immediately to enable us to change our list, as it is important that we have a full and complete list of your depositories.

Please enter in the specified columns the purpose for which the account is used and the rate of interest allowed.

Yours truly,

G. L. EDWARDS, *Treasurer.*

Blanks enclosed for the following companies.
Elgin, Joliet & Eastern Ry. Co.
Chicago, Lake Shore & Eastern Ry. Co.

(Copy of Carbon Copy in Treasurer's File 16–1)

EB–16–1

JUNE 13, 1932.

MR. G. L. EDWARDS,
Treasurer, United States Steel Corporation,
71 Broadway, New York, N. Y.

DEAR SIR: Complying with your request of the 10th inst., I beg to hand you herewith a list of our depositories, showing the rates of interest and the dates the rates became effective.

These lists are for both the Elgin, Joliet and Eastern and Chicago, Lake Shore and Eastern Railway Companies.

Yours truly,

Treasurer.

Elgin, Joliet and Eastern Ry. Co.

(Banks included in Corp. Cash)

Bank	Location	Interest rate	Interest effective
Continental Ill. Bank & Trust Co.	Chicago	½ of 1%	May 16/32.
First National Bank of Joliet	Joliet, Ill.	2%	March 11/32.
Gary State Bank	Gary, Ind.	1½%	April 1/32.
South Chicago Savings Bank	So. Chicago	1½%	May 21/32.
First National Bank	Rossville, Ill.		Nominal balance a/c coal strike.

(Banks not included in Corp. Cash)

Continental Ill. Bank & Trust Co.	Chicago, Ill.		Special Account: Primarily for payment of Genl. Off. pay rolls, also Special Compensation on U. S. Steel Corpn. stock.

(Copy of list referred to above.)

[Copy]

(Treasurer's File 33–8)

WPB–20–5
33–8
33–9
JULY 8, 1932.

Mr. G. L. EDWARDS,
Treasurer, United States Steel Corporation,
71 Broadway, New York, N. Y.

DEAR SIR: I am enclosing herewith our draft No. 883, in favor of the Chicago, Lake Shore and Eastern Railway Company, endorsed to the United States Steel Corporation, for $515,806.62, drawn on you, which covers rental due the Chicago, Lake Shore and Eastern Railway Company for a period of six months, ended May 31, 1932.

The above amount is to be charged to the Elgin, Joliet and Eastern Railway Company Advance Account, and credited to the Chicago, Lake Shore and Eastern Railway Company Advance Account.

Yours truly,

Treasurer.

J
Enc.

[Copy]

(Treasurer's File 33–8)

EB–33–8
AUGUST 17, 1932.

Mr. G. L. EDWARDS,
Treasurer, United States Steel Corporation,
71 Broadway, New York, N. Y.

DEAR SIR: In our August forecast, we have made provision for the withdrawal from our Advance Account of $100,000.00, which we believe at this time will be required some time during the latter part of this month.

It is not our intention to withdraw from our Advance Account the above amount or any part thereof unless occasion requires. Should we find it absolutely necessary to take this action, will you kindly advise whether we can have your approval of such withdrawal.

Yours truly,

Treasurer.

[Copy]

(Treasurer's File 33–8)

UNITED STATES STEEL CORPORATION,
New York, August 19, 1932.

MR. EDW. BEECROFT,
Treasurer, Elgin, Joliet and Eastern Railway Company,
208 South La Salle Street, Chicago, Illinois.

DEAR SIR: Referring to your letter of August 17, file No. EB–33–8:

It will be in order for you to draw $100,000.00 against your Advance Account if it is absolutely necessary.

Yours truly,

(Signed) J. H. GEWECKE,
Assistant Treasurer.

(Copy of Copy—Attached to Auditor's Journal Voucher 1136–May 1909)

[Telegram]

ELGIN, JOLIET & EASTERN R'Y CO.,
Chicago, Ill., June 7th, 1909.
(Via American Steel & Wire Co.'s Private Wire.)

To W. J. FILBERT,
Comptroller, United States Steel Corporation,
New York City, New York.

Will you kindly advise annual rate of interest you will allow E., J. & E. on $1,187,083.39 you have on deposit in advance account.

F. W. SUTTON.

(Copy of Original—Attached to Auditor's Journal Voucher 1136–May 1909)

[Telegram]

UNITED STATES STEEL CORPORATION,
461 Y. *Worcester, June 7, 1909.*

F. W. SUTTON:

Your wire. The annual rate on interest on the amount referred to will be 2½%.

W. J. FILBERT.

435 pm.

Auditor's Journal Voucher, Elgin, Joliet & Eastern Railway Company, Chicago. 1909

Auditor's No. 1136.
Month of May 1909.

Debit as below—Credit as below

U. S. Steel Corporation Interest on Advance Account

2225 78

Cr. Interest on U. S. Steel Corporation Advance Account

For interest from May 4th to 31st, 1909, at 2½ per cent per annum on amount on deposit with U. S. Steel Corporation Advance a/c. See statement attached to Journal Voucher No. 1135.

C. G. HOLM, *Bookkeeper.*

216 *Government's Exhibit F*

[File endorsement omitted.]

IN RE: DIVIDENDS

(President's File No. 208)

UNITED STATES STEEL CORPORATION,
New York, December 7, 1921.

Mr. A. F. BANKS,
President, Elgin, Joliet & Eastern Railway Co.,
Chicago, Illinois.

DEAR SIR: It is recommended that the Directors of Elgin, Joliet and Eastern Railway Company at a meeting to be held sometime during the current month, declare a dividend of 4%, $400,000.00, on the capital stock, payable on or before December 30, 1921.

Kindly acknowledge receipt.

Yours truly,

(Signed) E. H. GARY,
Chairman.

[Copy.]

(President's File No. 208)

AFB–M

JUNE 5TH, 1922.

Mr. W. J. FILBERT,
Comptroller, United States Steel Corporation,
71 Broadway, New York.

DEAR SIR: It has been customary for us to declare an extra dividend of five percent on our C., L. S. & E. Stock at our June meeting

and I presume that it will be the wish of Judge Gary that we declare a dividend this year.

Will you kindly advise so that we can prepare our minutes and arrange to declare such dividend?

Yours truly,

President.

[Copy.]

(President's File No. 208)

UNITED STATES STEEL CORPORATION,
New York June 7, 1922.

MR. A. F. BANKS,
President, Elgin, Joliet & Eastern Ry. Co.
Chicago, Ill.

DEAR SIR: I am in receipt of your letter of the 5th inst., concerning C. L. S. & E. dividend. It is Judge Gary's wish that in the case of the subsidiary railway companies there should be a continuity of dividend declarations year after year assuming the surplus of the companies permit and they have sufficient cash resources to pay the same. As the C., L. S. & E. is in this position as to surplus and assets, I beg to advise that it will be in order and we will expect that the usual semi-annual dividend paid in June of each year will be declared some time during this month.

Thankin' you for calling our attention to this matter, I am

Yours very truly,

(Signed) W. J. FILBERT,
Comptroller.

B
[Copy.]

(President's File No. 208)

AFB—M
DECEMBER FIRST, 1922.

MR. W. J. FILBERT,
Comptroller, United States Steel Corporation,
71 Broadway, New York.

DEAR SIR: It has been customary for a number of years for the Chicago, Lake Shore and Eastern to declare an extra dividend of five percent on its Capital Stock during the month of December, and payable on or before the thirtieth day of December, and on the same date for the E., J. & E. to declare its regular four percent dividend.

Will you kindly take the matter up and see if we shall take same action this year?

Yours truly,

President.

[Copy.]

(President's File No. 208)

UNITED STATES STEEL CORPORATION,
New York, December 4, 1922.

Mr. A. F. BANKS,
President, Elgin, Joliet & Eastern Ry. Co.,
Chicago, Ill.

DEAR SIR: I am in receipt of your letter of the 1st instant, concerning declaration of dividend by Chicago, Lake Shore & Eastern Ry. Co. Assuming that the C., L. S. & E. Ry. Co. has ample surplus and sufficient cash to pay the dividend, we are, of course, fully in accord with this regular dividend of 5% being paid in December. I assume that it would not be well to consider the question of declaring an addition percentage at this time even though the company had sufficient surplus and cash to permit it to pay the same. I have not given any thought to this feature so far as the general policy is concerned, nor have I looked up the statements of accounts to see whether the same would be feasible or possible. Even if it were, the controlling feature would be that of policy, I think. If you care to express any views to me on this I would be glad to receive them.

With respect to the Elgin, Joliet & Eastern Ry. Co., we feel that the regular dividend of 4% should be declared in December.

Yours very truly,

(Signed) W. J. FILBERT,
Comptroller.

[Copy.]

(President's File No. 208)

UNITED STATES STEEL CORPORATION,
New York, June 15, 1923.

Mr. A. F. BANKS,
President, Chicago, Lake Shore & Eastern Ry. Co.,
Chicago, Ill.

DEAR SIR: In reviewing with Judge Gary this morning the matter of dividends which we have to suggest that subsidiary companies declare in the month of June, he approved the recommendation that the Chicago, Lake Shore & Eastern Railway Co. declare its regular dividend of 5%, payable before the end of June; and also in view of the large amount of undivided surplus which the Railway Company has available in cash and your talk with me a few weeks ago concerning dividends, that there be declared this month in addition to the regular dividend an extra of 5% provided that you see no serious and potention objections to so doing. Will you kindly advise me on this point.

Yours truly,

(Signed) W. J. FILBERT,
Comptroller.

[Copy.]

(President's File No. 208)

AFB M

NOVEMBER 12TH, 1923.

Mr. E. H. GARY,
Chairman, United States Steel Corporation,
71 Broadway, New York.

DEAR SIR: If it meet with your approval, I would like to declare the regular four percent dividend on E., J. & E. Stock on our regular dividend day in December, and in addition declare an extra two percent, feeling that in the future we can continue to pay a total of six percent each year on E., J. & E. Stock.

We have never paid more than four percent, and I feel that our earnings justify us in paying this extra dividend.

Yours truly,

President.

[Copy.]

(President's File No. 208)

UNITED STATES STEEL CORPORATION,
New York, November 14, 1923.

Mr. A. F. BANKS,
President, Elgin, Joliet & Eastern Ry. Co.,
Chicago, Illinois.

DEAR SIR: Judge Gary has handed me your letter of the 12th instant bearing his approval to your recommendation that E., J. & E. declare an extra dividend of 2% in December in addition to its regular dividend of 4%; and has asked me to advise you accordingly.

In this connection do I understand it is your idea that in December the C., L. S. & E. Ry. Co. will also declare a dividend of 5%, corresponding to the declarations at this rate which it has regularly made in december for a number of years past? You recall an extra 5% was declared in June last and at that time, if my recollection serves me rightly, it was rather understood that that extra of 5% would not substitute for the 5% declaration usually made in December.

Yours truly,

(Signed) W. J. FILBERT,
Comptroller.

B
[Copy.]

(President's File No. 208)

AFB M

NOVEMBER 16, 1923.

Mr. W. J. FILBERT.
Comptroller, United States Steel Corporation,
71 Broadway, New York.

DEAR SIR: Replying to your letter of the 14th instant.

It is my idea to declare the regular four percent dividend on E., J. & E. stock in December and an extra dividend of two percent. That will make a total of six percent on E., J. & E. stock for the year 1923, and as you well know we have never paid in excess of four percent on E., J. & E. stock since its organization.

We declared a dividend June 14, 1922, payable June 30, 1922, of five percent on C., L. S. & E. stock and declared an extra dividend of five percent on C., L. S. & E. stock December 20, 1922, payable December 31, 1922, making a total of ten percent for the year 1922 on C., L. S. & E. Stock.

On June 13, 1923, we declared a dividend of five percent on C., L. S. & E. stock payable June 30, 1923, and on June 19, 1923, we declared an extra dividend of five percent on C., L. S. & E. stock payable June 30, 1923. I believe we should declare another extra dividend of five percent on C., L. S. & E. stock during the month of December to be paid on or before December 31st.

Our balance sheet of September 30th shows our cash resources of the E., J. & E. $12,500,123.00 and C., L. S. & E. $7,304,592.00, and I think we are perfectly safe in declaring the dividends suggested above.

Kindly advise your ideas.

Yours truly,

President.

[Copy.]

(President's File No. 208)

NOVEMBER 16, 1923.

Mr. BANKS: Dividends on Elgin, Joliet & Eastern Ry. Co. capital stock:

	Payable	Amount
Regular: Dec. 20, 1922	Dec. 31, 1922	$400,000.00

Chicago, Lake Shore & Eastern Ry. Co.:

	Payable	Amount
Regular: June 14, 1922	June 30, 1922	$450,000.00
Extra: Dec. 20, 1922	Dec. 31, 1922	450,000.00
Regular: June 13, 1923	June 30, 1923	450,000.00
Extra: June 19, 1923	do	450,000.00

[Copy]

(President's File No. 208)

UNITED STATES STEEL CORPORATION,
New York, November 19, 1923.

Mr. A. F. BANKS,
President, Elgin, Joliet & Eastern Ry. Co.,
Chicago, Ill.

DEAR SIR: I have yours of the 16th instant in reference to dividends. We understood this matter as to the E., J. & E. precisely in accordance with the statement as outlined in your letter.

In reference to the C., L. S. & E. Ry. Co. We are agreeable to the declaration by this company of an extra dividend of 5% in December. My object in referring to the C., L. S. & E. dividend in my letter of the 14th instant was to make sure that my understanding was correct, namely that you did not intend that the extra of 5% paid in June would substitute for the 5% extra which regularly you have been paying in December for several years.

Yours truly,

(Signed) W. J. FILBERT,
Comptroller.

B
[Copy]

(President's File No. 208)

UNITED STATES STEEL CORPORATION,
New York, December 17, 1923.

Mr. A. F. BANKS,
President, Elgin, Joliet & Eastern Railway Company.
Chicago, Ill.

DEAR SIR: It is recommended that the Directors of Elgin, Joliet & Eastern Railway Company, at a meeting to be held sometime during the current month, declare a dividend of 6%, $600,000, on its Capital Stock, payable on or before December 31, 1923.

Kindly acknowledge receipt.

Yours truly,

(Signed) E. H. GARY,
Chairman.

W. J. F.

Send merely as a formality. W. J. F.
[Copy]

(President's File No. 208)

UNITED STATES STEEL CORPORATION,
New York, December 15, 1924.

Mr. A. F. BANKS,
President, Elgin, Joliet & Eastern Ry. Co.
Chicago, Ill.

DEAR SIR: I beg to advise you that I reported today to Judge Gary the conclusion you and I reached last week to the effect that the E., J. & E. would declare a dividend of 4% on its Capital Stock this month and the C., L. S. & E. an extra dividend of 10% on its Capital Stock, and Judge Gary approved the same.

Yours truly,

(Signed) W. J. FILBERT,
Comptroller.

B
[Copy.]

(President's File No. 208)

UNITED STATES STEEL CORPORATION,
New York, December 20, 1926.

Mr. A. F. BANKS,
President, Elgin, Joliet & Eastern Ry. Company,
Chicago, Illinois.

DEAR SIR: It is recommended that the Directors of the Elgin, Joliet & Eastern Railway Company, at a meeting to be held sometime during the current month, declare a dividend of 4% and an extra dividend of 2% upon its Capital Stock, payable on or before December 31, 1926.

Kindly acknowledge receipt.

Yours truly,

(Signed) E. H. GARY,
Chairman.

WJF

Sent for record.
[Copy.]

(President's File No. 208)

UNITED STATES STEEL CORPORATION,
New York, December 20, 1926.

Mr. A. F. BANKS,
President, Chicago, Lake Shore & Eastern Railway Company,
Chicago, Ill.

DEAR SIR: It is recommended that the Directors of the Chicago, Lake Shore & Eastern Railway Company, at a meeting to be held

sometime during the current month, declare a dividend of 5% on its capital stock, payable on or before December 31, 1926.

Kindly acknowledge receipt of this letter.

Yours truly,

(Signed) E. H. GARY,
Chairman.

WJF

For record only.
[Copy.]

(Copy of Copy—President's File 208)

AFB—M
NOVEMBER 29TH, 1929.

MR. W. J. FILBERT,
Comptroller, United States Steel Corpn.,
71 Broadway, New York.

DEAR SIR: During the month of December the Elgin, Joliet and Eastern Railway declares its regular dividend of four percent. Last year we declared an extra dividend of two percent.

In December 1928 the Chicago, Lake Shore and Eastern Railway declared an extra dividend of ten percent, and in June 1928 declared its regular dividend of five percent and an extra dividend of five percent—making a total of twenty percent for the entire year.

Will you please let me know as early as possible what dividends you would suggest we pay for the Elgin, Joliet and Eastern Railway in December 1929 in addition to our regular four percent dividend, and also if your suggestion is that we pay an extra ten percent dividend on the Chicago, Lake Shore and Eastern in December 1929?

My reason for taking the matter up with you so early is that I want to leave for California the 17th or 18th of December to spend the holidays with my family in Altadena, and would like to have all of this out of the way before I go. If you can give me a prompt answer I shall appreciate it very much.

Yours truly,

President.

(Copy of Original—President's File 208)

UNITED STATES STEEL CORPORATION,
71 Broadway, New York, December 3, 1929.

MR. A. F. BANKS,
President, Elgin, Joliet and Eastern Railway Company,
Chicago, Ill.

DEAR SIR: In the absence of Mr. Filbert, who is in the South on a two weeks vacation, we have given consideration to the question of dividends raised in your letter of November 29th. Our conclusion is

that it would be Mr. Filbert's idea that both the E., J. & E. and C., L. S. & E. would declare dividends for the year 1929 to an extent at least equal to that paid in recent years. Accordingly if you concur we suggest that an extra dividend of 10% be declared by C., L. S. & E., making the total rate for the year including extras the same as for 1928, that is, 20%. For E., J. & E. Ry. Co. the rate of 4% regular and 2% extra is suggested.

These recommendations are based on the understanding arrived at from an examination of consolidated earnings figures of the railroads, that earnings available for dividends will be ample to take care of the suggested declarations. It might even be that a higher dividend would be warranted, but under the circumstances we do not suggest any additional amount beyond those stated.

Yours truly,

(Signed) JAS FLEMING,
Assistant Comptroller.

JF—G.

(Copy of Copy—President's File 208)

AFB–M

NOVEMBER 26TH, 1930.

Mr. W. J. FILBERT.
Comptroller, United States Steel Corporation,
71 Broadway, New York, New York.

DEAR SIR: Will you please let me know what your suggestions are in regard to dividends for the E., J. & E. and C., L. S. & E. Railroads to be declared in December?

In June last the C., L. S. & E. declared a regular dividend of five percent and extra of five. In December 1929, the C., L. S. & E. and extra dividend of ten percent. In December 1929, the E., J. & E. declared its regular dividend of four percent and extra of two. We can declare the same dividends for both Companies this year if it is thought advisable.

Will you kindly let me hear from you promptly as I want to leave for California about the 18th or 19th of December so as to spend Christmas with my family, and I would like, of course, to have this matter out of the way before I leave?

Yours truly,

President.

47256—36——18

(Copy of Original—President's File 208)

UNITED STATES STEEL CORPORATION,
71 Broadway, New York, November 29, 1930.

Mr. A. F. BANKS,
President, Elgin, Joliet and Eastern Railway Company,
Chicago, Ill.

DEAR SIR: Answering your letter of the 26th respecting dividends.

Mr. Fisher informs me the E., J. & E. will earn this year only from $200,000 to $300,000 available to it for dividends. However, in view of the additions it has made to its surplus during the four years prior to 1930, in which it has paid annually 6% dividend, together with the status of its cash resources, it appears logical it should continue this year the declaration of 6%—4% regular and 2% extra. We accordingly so recommend.

The C., L. S. & E. Mr. Fisher states will have this year a surplus for dividends of around $1,700,000 to $1,800,000. The dividends for the year at same total rates paid in past three years, will call for $1,800,000, just about what it will earn this year for the stock. In view of this there appears no reason why it should not declare in December the usual 10% extra as you propose. It has ample cash resources to pay same. We so recommend.

Yours truly,

(Signed) W. J. FILBERT,
Comptroller.

G

(Copy of Original—President's File 208)

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY.
EB–40409–8–15–46.
Chicago, December 1, 1931.

Mr. S. M. ROGERS,
President, E., J. & E. Ry. Co., Building.

DEAR SIR: Following the usual custom, Directors' meetings should be held during the month of December for the roads named below:

Elgin, Joliet and Eastern Ry. Co.
Chicago, Lake Shore and Eastern Ry. Co.
Joliet and Blue Island Ry. Co.

Such meetings are held principally for the purpose of dividend declarations, and those declared December 17th, 1930, were as follows:

	Total for 1930
E., J. & E. Ry. Co., Regular 4%, Extra 2%	6%
C., L. S. & E. Ry. Co., Extra 10%	20%

J. & B. I. Ry. Co., $7,500.00 (rental change) $14,985.00.
Dividends declared June 10, 1931, for account of C., L. S. & E. Ry. Co. Regular 5%.

Will you please advise on what date you wish the meetings called in December of the current year, and what dividends you wish declared for the two roads first named.

Yours truly,

(Signed) EDW. BEECROFT,
Secretary.

J

(Copy of Copy—President's File 208)

SMR–G
DECEMBER 1ST, 1931.

Mr. W. J. FILBERT,
Comptroller, U. S. Steel Corporation,
71 Broadway, New York, N. Y.

DEAR SIR: During the month of December the Elgin, Joliet and Eastern Railway Company declares its regular dividend of 4 per cent, and for several years past it has been our custom to declare an extra 2 per cent. While it is true we will not earn our fixed charges this year, to say nothing of the dividend, I believe we should declare our regular dividend of 4 per cent, which could be paid out of our surplus. We have on deposit in our Advance Account as of November 30th, 1931, to the credit of the Elgin, Joliet and Eastern Railway, $4,946,735.56.

The regular dividend of the Chicago, Lake Shore and Eastern Railway Company of 5 per cent was declared in June, 1931, no extra being declared at that time. For some years past extra dividends of from 5 to 10 per cent have been declared by the Chicago, Lake Shore and Eastern during June and December. In view of present conditions it is questionable as to whether we should declare an extra dividend on the Chicago, Lake Shore and Eastern this year, unless you wish to make a further distribution of the surplus. We have on deposit in our Advance Account as of November 30th, 1931, to the credit of the Chicago, Lake Shore and Eastern Railway, $12,275,757.32.

Will you kindly advise me at your convenience your suggestions as to what we should do in the way of dividends for these two Roads in December?

Yours truly,

President.

(Copy of Original—President's File 208)

UNITED STATES STEEL CORPORATION.
71 Broadway, New York, December 8, 1931.

"Personal & Confidential."

Mr. S. M. ROGERS,
President, Elgin, Joilet & Eastern Ry. Co.,
Chicago, Ill.

DEAR SIR: Referring to your letter of the 1st December concerning dividends.

After reviewing the situation and discussing it with Mr. Taylor, our recommendation is that the Elgin, Joilet & Eastern Railway Company declare this month its regular dividend of 4%; and that the Chicago, Lake Shore & Eastern Railway Company declare an extra of 2%.

Yours truly,

(Signed) W. J. FILBERT,
Comptroller.

So.

(Copy of original—President's file 208)

E., J. & E. Railway Co.

Declared	Dividends	Payable
Dec. 21, 1926	4%	Dec. 29, 1926
Do	2% Extra	Do.
Dec. 12, 1927	4%	Dec. 29, 1927
Do	2% Extra	Do.
Dec. 27, 1928	4%	Dec. 31, 1928
Do	2% Extra	Do.
Dec. 12, 1929	4%	Dec. 27, 1929
Do	2% Extra	Do.
Dec. 17, 1930	4%	Dec. 27, 1930
Do	2% Extra	Do.
Dec. 17, 1931	4%	Dec. 31, 1931

(Copy of original—President's file 208)

UNITED STATES STEEL CORPORATION,
OFFICE OF VICE CHAIRMAN, FINANCE COMMITTEE,
71 Broadway, New York, December 17, 1932.

Mr. S. M. ROGERS,
President, Elgin, Joliet & Eastern Ry. Company, Chicago, Ill.

DEAR SIR: I seem to have a pretty strong recollection that our decision was that one of the two companies would not pay a dividend, but which one I don't recall; and then at times I incline to the idea that the conclusion was that neither would pay a dividend.

Will you please telegraph me Monday morning just what the conclusion was. It was a rather inexcusable oversight for me not to have made a memorandum at the time.

Yours truly,

(Signed) W. J. FILBERT,
Vice Chairman.

D

(Copy of copy—President's file 208)

[Telegram]

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY,
Chicago, Ill., December 19, 1932.

W. J. FILBERT, *New York, N. Y.:*

Your letter seventeenth. No definite decision was reached in our recent discussion regarding dividends. Am mailing you letter on Century today.

S. M. ROGERS.

Via USS Wire.

(Copy of Copy—President's file 208)

DECEMBER 19TH, 1932.

Memorandum

MY DEAR MR. FILBERT: This will acknowledge receipt of your letter of the 17th with reference to dividends.

I wired you this morning no conclusion was reached at our last conference on this subject. It is my recollection that you thought it would be too bad to spoil our continuous record of dividends on the E., J. & E.; on the other hand, said you would leave it with me, but that you felt if we did not declare any dividend on the E., J. & E. we should not declare any extra dividend on the C., L. S. & E. Our Treasurer informs me that the E., J. & E. balance in the advance account as of December 17th is $1,815,346.87. Against this we will, undoubtedly, have to draw for the following items during the first six months of 1933:

Jan. 1933, C., L. S. & E. Rental—including depreciation	$535,729.97
Apr. 1, 1933, Elgin Equipment Bond & Interest	141,600.00
May 1, 1933, E., J. & E. Bond Interest	250,000.00
May 1, 1933, Taxes	597,273.69
June 1, 1933, C., L. S. & E. Bond Interest	202,500.00
July 1, 1933, Joliet Equipment Bond & Interest	153,125.00
	$1,880,228.66

In other words, unless there is a material improvement in business conditions, our advance account, so far as the E., J. & E. is concerned, will be more than wiped out by July 1st. To pay a regular dividend of 4% will, as you know, require $400,000.00.

As to the C., L. S. & E.—they have a balance as of Dec. 17th in the advance account of $12,759,032.94, and regular dividend of 5% was declared in June of this year. I am inclined to agree with you if we pay no dividend on the E., J. & E., it would be inadvisable to declare an extra dividend on the C., L. S. & E. at this time.

It would, therefore, be my recommendation that we declare no dividends on either the E., J. & E. or C., L. S. & E. in December.

In addition to the above the E., J. & E. will, in all probability, have to construct during 1933 two new bridges which as near as we can estimate at this time will probably cost in the neighborhood of $800,000.00.

(P. S.—A personal note in re California trip * * *.)

(Copy of Original—President's File 208)

[Telegram]

UNITED STATES STEEL CORPORATION,

1772 JO *New York, Dec. 22, 1932.*

S. M. ROGERS:

Your letter 19th. After Considering matter from Various angles, we reach the same conclusion you do as stated in last Paragraph First Page of your letter, and endorse your recommendation.

W. J. FILBERT.

996 am.

Government's Exhibit G

[File endorsement omitted.]

IN RE: PENSIONS

217 (Copy of Original—Auditor's File 97–B General File)

UNITED STATES STEEL CORPORATION,

71 Broadway, New York, January 25, 1928.

To Accounting Officers of Subsidiary Railroad Companies:

It is recommended that monthly, beginning January 1, 1928, you charge to Operating Expenses one-sixth of the amount assumed by you for pensions paid by the U. S. Steel & Carnegie Pension Fund during the preceding six months' period, adjustment to be made in June and December each year to the actual amount to be absorbed by your Company. The credit account resulting from charges for accruals as stated to be carried in a distinctive liability fund account under "Current Liabilities—Outside", termed "Accrued U. S. Steel & Carnegie Pension Fund Liability." Company pensions should, of course, be charged monthly to Operating Expenses as heretofore.

In order that we may have a complete summary of these charges to Operating Expenses, it is desired to receive from you a monthly exhibit per the following classifications:

(a) Payments under U. S. Steel & Carnegie Pension Fund.

(b) Company pensions.

This exhibit should show the charges for the month and cumulative charges for pensions from first of year to date.

Yours truly,

W. J. FILBERT, *Comptroller.*

(Copy of Original—Auditor's File 97–B General File)

UNITED STATES STEEL CORPORATION,
71 Broadway, New York, September 12, 1931.

To Accounting Officers of Subsidiary Companies:

Referring to provisions subsidiary companies are making through Profit and Loss Account for Pension Payments which subject was discussed in Conference of Auditors last March, it seems advisable, as then suggested, that allowance be currently made for the increasing amount of this expense.

Accordingly, it is now recommended that the amounts set aside for the second six months of 1931 be based upon the respective amounts billed subsidiary companies for the first half of 1931 increasing such amounts by 25% of same. This rate will, we think, substantially take care of the probable added increase as now disclosed. Amounts lacking in July and August provisions can be taken up in September Account.

As previously advised, companies whose pension expense will, under this plan, be less than $1,000 for six months, need not make these provision charges.

Yours truly,

JAS. F. FLEMING,
Assistant Comptroller.

JF:V

(Copy of Original—Auditor's File 97–B General File)

UNITED STATES STEEL CORPORATION,
71 Broadway, New York, January 29, 1932.

To Accounting Officers of Subsidiary Companies:

Referring to provisions subsidiary companies are making through Profit and Loss Account for Pension Payments which subject was discussed in Conference of Auditors in March, 1931, and by correspondence since, it seems advisable, as then suggested, that allowance be currently made for the increasing amount of this expense.

It is our understanding that generally subsidiary companies' auditors are watching this situation and adjusting these provisions on the basis of up-to-date information as to pension payments to their retired employes. This arrangement is, of course, most satisfactory and should be continued.

However, in case information is not available to permit a more exact calculation, it is recommended that the amounts set aside for the first six months of 1932 be based upon the respective amounts billed subsidiary companies for the second half of 1931 increasing such amounts by approximately 10% of same. This rate will, we think substantially take care of the probable added increase as now disclosed.

As previously advised, companies whose pension expense will, under this plan, be less than $1,000 for six months, need not make these provisional charges.

Yours truly,

H. L. AUSTIN, *Comptroller.*

JF:V.

(Copy of Original—Auditor's File No. 97-B—General File)

UNITED STATES STEEL CORPORATION,
71 Broadway, New York, July 29, 1932.

To Accounting Officers of Subsidiary Companies:

Referring to monthly provisions subsidiary companies are making through Profit and Loss Account for Pension Payments it is recommended that the amounts to be set aside for the second six months of 1932 be based upon the respective amounts billed subsidiary companies for the first half of 1932 increasing such amounts by approximately 10%. However, if subsidiary auditors are in a position to make a better refinement of their monthly provisions we are, of course, agreeable to this plan.

It is understood no provisional charges should be made where the pension expense is less than $1,000 for the six months period.

Yours truly,

H. L. AUSTIN, *Comptroller.*

(Copy of Original—Attached to Audit Voucher 69321—December 1932)

ELGIN, JOLIET & EASTERN RAILWAY COMPANY,
New York, December 31, 1932.

To UNITED STATES STEEL CORPORATION, Dr.,
71 Broadway, New York.

For amount advanced by United States Steel Corporation for your proportion of net deficit in income of United States Steel & Carnegie Pension Fund in comparison with disbursements made, for six months ending December 31, 1932, per statement attached, $73,794.62.

(Copy Original—Attached to Audit Voucher 69321—December 1932)

UNITED STATES STEEL CORPORATION,
71 Broadway, New York, January 7, 1932.

To Accounting Officers of Subsidiary Companies:

Please have the attached bill for your proportion of Pension Fund Expense for the six months ending December 1932 which is based on calculations per statements enclosed, taken up and credited to us in December 1932 Clearance Account.

If this bill is received by you too late too permit taking up same on your December Form U. S. #101, we will correct that form by

crediting U. S. Steel Corporation with the amount of the bill, and will be obliged if you will change your records accordingly. This is being done because we consider it quite desirable your books show this settlement in December 1932.

Yours truly,

(Signed) (Stamp) H. L. AUSTIN,
Comptroller.

(Copy of Original—Auditor's File 97–B General File)

UNITED STATES STEEL CORPORATION,
New York, January 19, 1933.

To Accounting Officers of Subsidiary Companies:

I refer to the provisions the various Subsidiary Companies have been making monthly by charges to Profit & Loss for account Employes Pensions and Pension Fund Expenses to take care of the semi-annual bills covering distribution to the several companies of Expenditures made by U. S. Steel & Carnegie Pension Fund in excess of income received by the Fund.

It has been our custom to recommend from time to time approximate increases in the amount of such monthly provisions in order to spread over the year the increasing reserves needed. The acknowledgements of these advices have indicated that the accounting officials are in a position to satisfactorily estimate this liability based on their intimate knowledge of pending changes in their pension roll. We have concluded that such a plan will be more satisfactory than the one heretofore observed; therefore, it is desired to have it uniformly adopted.

It should be understood that in estimating your provisions for this purpose they should be based upon the most recent semi-annual statement of the operations of the Pension Fund as modified by additions to and eliminations from the pension rolls of former employes whose pensions are used as a basis for apportionment to your company. In making your estimate it should be assumed that the income and general expenses of the fund as well as the basis for apportionment of the same to particular companies will remain constant at amounts corresponding to the most recent reports.

Effort should be made to avoid severe fluctuations in the monthly provisions by anticipating, as far as possible, any additions to the pension rolls, the actual approval and settlement of which may be delayed.

It is understood that no provisions need be made in the case of companies whose pension apportionment is less than $1,000 for the six months' period.

Yours truly,

(Signed) H. L. AUSTIN,
Comptroller.

JF–G.

(Copy of Original—Attached to Auditor's January 1933 J. E. No. 5391)

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY
208 South La Salle Street, Chicago, Ill., February 3, 1933.

Mr. C. G. HOLM,
Asst. Gen. Auditor, E. J. & E. Ry. Building.

DEAR SIR: Please refer to your letter dated January 25th, enclosing a copy of circular letter from Mr. H. L. Austin, Comptroller, with respect to monthly charges to the "Pension Account" under General Expenses.

This office will advise you monthly as to the total payments to be made covering employes of our company. From this amount you should deduct one-sixth of the apportionment to our Company of the net income to this fund which is shown on statement attached to voucher made by you in December 1932 Accounts in favor of the U. S. Steel & Carnegie Fund to cover the deficit in the fund for six months ended Dec. 31, 1932. Commencing with July 1932 and each six months thereafter you should deduct one-sixth of the amount shown on the most recent report. This deduction is to be made in accordance with the last sentence of the third paragraph of Mr. Austin's letter. The total payment for the month of January 1933 amounts to $13,408.70.

Yours truly,

(Signed) S. M. ROGERS,
President.

218 *Government's Exhibit H*

[File endorsement omitted.]

IN RE: DIVISION COUNSEL

(File #1600–5—Copy)

UNITED STATES STEEL CORPORATION,
OFFICE OF THE COMPTROLLER,
February 16, 1920.

Mr. A. F. BANKS,
President, Elgin, Joliet & Eastern Railway Co.,
Chicago, Illinois

DEAR SIR: I beg to advise that on recommendation of Mr. W. W. Corlett, General Solicitor, approved by Judge E. H. Gary, Chairman, an increase has been made, effective January 1, 1920, in the annual allowance to Knapp & Campbell, Division Counsel, Chicago.

Because of this advance and in order that the apportionment of their total allowance to the subsidiary companies may more equi-

tably reflect the services rendered to the respective companies interested, a revision has been made of the amounts chargeable the several companies. Under this revision your company is allotted the annual sum of $14,000 dating from January 1, 1920.

Bills for the monthly amounts will be rendered as heretofore by Illinois Steel Co. We trust the arrangement will be satisfactory to you.

Yours truly,

(S.) W. J. FILBERT,
Comptroller.

S

P. S.—Mr. Hyman has said he would see Mr. Rogers and ascertain if the Railroad Administration would accept bill for the increase for January and February. If not, then Illinois Steel Co. will absorb the increase for these two months.

W. J. F.

[Copy]

(File #1600–5)

AFB:M
FEBRUARY 19, 1920.

Mr. G. W. WILLIAMS,
Federal Auditor, E., J. & E. R. R. Building.

DEAR SIR: Effective upon return of the Elgin, Joliet and Eastern to Corporate management, we will accept bills from the Illinois Steel Company for law expenses of Knapp and Campbell, Division Counsel, at an annual rate of $14,000.00 per year.

Yours truly,

President.

(File #1600–5—Copy)

UNITED STATES STEEL CORPORATION,
OFFICE OF THE COMPTROLLER,
New York, Jan. 4, 1923.

Mr. A. F. BANKS,
President, Elgin, Joliet, & Eastern Ry. Co.,
Chicago, Ill.

DEAR SIR: I beg to advise you that after careful review and consideration it has been concluded that a revised allocation should be made, effective January 1, 1923, of the annual compensation paid Knapp & Campbell, Division Counsel, for all subsidiaries at Chicago, this revised allocation more equitably reflecting, it is felt, the services rendered to the respective companies interested. Under this revision your Company is allotted an annual amount of $23,940,

dating from January 1, 1923. Bills for the mont'ly amounts will be rendered as heretofore by the Illinois Steel Co. We trust the revised amount will be satisfactory to you.

Yours truly,

(S.) W. J. FILBERT,
Comptroller.

J

NOTE.—O. K. A. F. B. Advised G. W. Williams—1-6-1923.

(File #1600-5—Copy)

UNITED STATES STEEL CORPORATION.
71 Broadway, New York, Jan. 28th, 1925.

Mr. A. F. BANKS,
President, Elgin, Joliet, & Eastern Ry. Co.,
Chicago, Ill.

DEAR SIR: I have yours of the 26th inst. in reference to payment of E., J., & E.'s proportion of total compensation paid to the firm of Knapp & Campbell for account of all the corporations's interests. I have also a letter from Mr. Hyman on the same date advising of the arrangement to which you call attention. I have written Mr. Hyman per copy of letter attached.

Yours very truly,

(S.) W. J. FILBERT,
Comptroller.

B
Encl.

(File #1600-5—Copy)

UNITED STATES STEEL CORPORATION.
71 Broadway, New York, January 28, 1925.

Mr. T. J. HYMAN,
Secy. & Treas., Ill. Steel Co., Chicago, Ill.

DEAR SIR: I received your letter of the 24th and now have your subsequent letter of January 26th in reference to E., J. & E. allotment of the Knapp & Campbell Compensation. You now say you have agreed to carry Knapp & Campbell on the E., J. & E. pay roll for the $39,500. It strikes me that this is simply tangling the situation up worse than it was before. In the first place I understand the $39,500 paid by the E., J. & E. covers, in addition to services of Messrs. Knapp and Campbell individually, services of other members of their firm, office, and law expenses. Now, under that line of reasoning is there warrant for carrying a payment of such a character on the pay roll of the E., J. & E. Ry. Co.? I cannot see any; I think it is wrong. How will the amount be put on the pay roll, i. e., for whom—for "Knapp & Campbell" or so much for, respectively, Mr. Knapp and for Mr. Campbell and others of the firm?

In my opinion a mistake is being made in proceeding on the lines proposed if I understand the same correctly. I think the plan you first proposed of having Knapp & Campbell bill the amount of $39,500 to the E., J. & E. is the right one. Mr. Buffington, I am certain, understands that Mr. Lindabury is not in sympathy with the manner in which the firm of Knapp & Campbell have been paid; he expressed himself to that effect to Mr. Buffington while I was present and also subsequently spoke to me about it. I have let the matter drift along because that is the way the firm has been paid ever since it was organized and they preferred to have the settlement made that way, i. e., if notwithstanding Mr. Lindabury's suggestion to Mr. Buffington it was not desired to make a change I did not want to stir up anything. But now that there is apparently introduced a split in this arrangement and part of the allowance which the firm receives is being paid it by Illinois Steel on pay roll and partly by E., J. & E. all on the pay roll. I beg to present my view as outlined above. In my opinion it results only in making a situation which is already unsound and has been criticized much worse from every point of view.

Yours truly,

Comptroller.

219 *Government's Exhibit 1*

[File endorsement omitted.]

IN RE: BONUSES

[Copy]

UNITED STATES STEEL CORPORATION,
71 Broadway, New York, February 4, 1931.

Personal and Confidential

Mr. C. G. HOLM,
Asst. Gen'l. Aud., Elgin, Joliet & Eastern Rwy. Co.,
Chicago, Ill.

DEAR SIR: 1. The amount fixed for your Company by the Committee of Stockholders having control of the distribution of the Fund for 1930, provided in accordance with the Profit Sharing Plan for employes, is $28,930.

2. This amount should be charged in your January 1931 Income Account and as a specific charge against Undivided Surplus at December 31, 1930, as outlined in letter of December 31, 1930, to Accounting Officers. The entry should refer to the general plan under and in accordance with which this allotment is made.

The resulting credit should be carried to an account termed "Accrued Liability for Employes' Profit Sharing Fund—1930." This

account should be reported in the January 1931 Balance Sheet as an item under "Current Liabilities—Outside."

The entire amount as above should be deducted as an item of expense in the Company's return for Income Taxes for year 1930, even though not actually charged out until 1931; it is, in fact, a 1930 accrued liability, and should be treated as such in Income Tax returns. But, as none of the payment to individual employes was made until 1931, it will not be reported through "Information at the Source" returns by the Profit Sharing Committee for 1930.

3. The above amount is to be remitted forthwith to Treasurer, U. S. Steel Corporation. This remittance should be made by check or draft accompanying voucher, and not by voucher-check alone. It is suggested the wording for this voucher be about as follows:

"For remittance to United States Steel Corporation of amount advanced by it for account this Company to Profit Sharing Committee, United States Steel Corporation, to cover payment of our allotment under Profit Sharing Plan for year 1930."

The amount of this voucher and remittance should be charged to the accrued liability account set up per paragraph 2 above.

4. As soon as allotment and distribution to individual employes are made we will send your President a detailed schedule of same.

5. Please note that no deductions have been made from the cash distributions for income tax which the Profit Sharing Committee may be required to withhold under the laws of the State of New York. To the extent that the Profit Sharing Committee may be required to retain and pay over this New York State Income Tax it is expected that your Company will collect the tax from the particular employe concerned. Full advices regarding this will be given your President later.

6. In case the above total is apportioned between several of the companies covered in the group for which the allotment is made, please advise promptly by wire the amount which you thus assign to each company.

Yours truly,

(Signed) W. J. FILBERT,
Comptroller.

V

P. S.—These advices are modified somewhat by our telegram of this date.

[Copy]

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY,
OFFICE OF THE PRESIDENT—DJO'C–G,
Chicago, Ill., February 4th, 1931.

Mr. C. G. HOLM,
Asst. Gen. Aud., E. J. & E. Ry. Building.

DEAR SIR: Please refer to Mr. Filbert's telegram to you of today concerning an amount of $28,930.00, and arrange to distribute this

amount to Operating Expenses in December, 1930 Accounts as follows:

M. W. Dept.:	
Superintendence (Joilet Div.)	$1,526.10
Superintendence (Gary Div.)	1,526.06
M. E. Dept.:	
Superintendence	3,280.26
Traffic:	
Superintendence	2,460.78
Transportation:	
Superintendence (Joilet Div.)	2,230.92
Superintendence (Gary Div.)	2,248.85
General:	
Salaries and Expenses of General Officers	15,357.03
Total	28,930.00

The above figures are estimated and as soon as actual figures are available they will be furnished you for adjustment of charges to primary accounts—the total figure, however, will not be changed.

Yours truly,

(Signed) A. F. BANKS.
President.

220 *Government's Exhibit J.*

[File endorsement omitted.]

IN RE: PURCHASES

(President's File No. 1384)

UNITED STATES STEEL CORPORATION,
New York, October 21, 1914.

Personal

MY DEAR MR. BANKS: We think it very important that purchases of all grades of coal on the outside be kept at a minimum.

Yours very truly,

(Signed) D. G. KERR,
Vice President.

To Mr. A. F. BANKS,
President, Elgin, Joliet and Eastern Ry. Co.,
Chicago, Illinois.

[Copy]

(President's File No. 1384)

AFB—M
OCTOBER 23, 1914.

Personal

Mr. D. G. KERR,
Vice President, United States Steel Corporation,
New York, N. Y.

DEAR SIR: Replying to your favor of the 21st inst. We are not buying any coal from any outside parties and are confining all of

our purchases to the Bunsen Coal Company. We did take some coal from some of the mines on our road up to October 1st in order to assist in keeping these mines open, but the fall trade is now helping them out, and we, on that date, discontinued purchases from them.

Yours very truly,

President.

[Copy]

(President's File No. 1384)

UNITED STATES STEEL CORPORATION.
New York, New York, October 21, 1915.

MY DEAR SIR: Referring to the tonnage of coal you are buying from outside mines located on the line of your railroad:

As you probably know, operations at Bunsen Coal Company have been curtailed recently, and we think the question of shutting off shipments of coal from outside mines should be gone into carefully, and where it is to the Corporation's interest to take coal from the Bunsen Coal Company it should be done.

Please go into the matter and advise.

Yours very truly,

(Signed) D. G. KERR,
Vice President.

To Mr. A. F. BANKS,
President, Elgin, Joliet & Eastern Railway Company,
Chicago, Illinois.

[Copy.]

(President's File No. 1384)

AFB—C
OCTOBER 25TH, 1915.

MY DEAR SIR: Replying to your favor of the 21st inst. We are not taking any coal from outside mines—our entire supply coming from the Bunsen Coal Company. We did take a small amount of coal from the mines on our road during the summer months in order to keep them going and hold their miners together, but this was discontinued September 30th.

Yours truly,

President.

To Mr. D. G. KERR,
Vice President, United States Steel Corporation,
New York, N. Y.

[Copy.]

(President's File No. 1384)

AFB—A
APRIL 21ST, 1917.

Mr. J. A. FARRELL,
President, United States Steel Corporation,
New York, N. Y.

DEAR SIR: We have an invoice today from the United States Fuel Company, covering shipments of coal to our Company from March 27th to April 7th, in which the price of coal has advanced $.58 per ton and I have today written Mr. Clingerman for some information in regard to this advance. The first intimation we had was the rendering of the bill. This advance in fuel will cost the E., J. & E. road between $350,000 and $400,000 a year.

The increase of prices of all materials used by E., J. & E. road, together with the tremendous advances made in labor, will leave us in such a position that we will be showing red figures for the E., J. & E. Road. So far as our railroad is concerned, we have not very bright prospects for net earnings.

Yours very truly,

President.

[Copy.]

(President's File No. 1384)

UNITED STATES STEEL CORPORATION,
OFFICE OF THE PRESIDENT,
New York, April 23rd, 1917.

Mr. A. F. BANKS,
President, Elgin, Joliet & Eastern Railway Company,
Chicago, Illinois.

DEAR SIR: Replying to yours of the 21st April:

The price for coal from United States Fuel Company which you mention is the Inter-Company price established by the price-list for the second quarter of 1917. I understand your company receives regularly a copy of this list. Prices of coal furnished you by subsidiary companies for the past five or six years have been based accordingly.

While the advance of 58 cents appears substantial, it is only relative to increases in prices for coal generally. In fact, the prevailing market prices for coal are, I believe, materially higher than the Inter-Company price-list figure.

Yours very truly,

J. A. FARRELL, *President.*

[Copy.]

(President's File No. 1384)

AFB—C
APRIL 25TH, 1917.

Mr. J. A. FARRELL,
President, United States Steel Corporation,
71 Broadway, New York City, N. Y.

DEAR SIR: Replying to your favor of the 23rd inst. in reference to the advance in the price of coal from the United States Fuel Company.

We have never received any of the Inter-Company price lists, and are only advised of changes in the price of coal when we receive the invoice. Everything purchased by the E., J. & E. Ry. Co. from any of the Subsidiary Companies (and we make no purchases outside of any material that can be supplied by Subsidiary Companies) we have to pay whatever price is marked on the invoice, and it is the market price at the time of shipment. We sell all of our scrap to the Illinois Steel Company, and that Company fixes the price that they will pay for the scrap. It is based on the price shown in the Iron Age Review for the week shipments are made. However, that does not apply to our rails. We could sell our rails to outsiders at a higher price than paid us by the Illinois Steel Company. We are, therefore, so far as our Company is concerned, placed at a disadvantage. We have no means of making a saving either in our sales or purchases.

Yours truly,

President.

(Notation:) Rec'd without letter from Comptroller's office 5/4/17 and given Mr. Kenzel. R. S. M. [Copy.]

(President's File No. 1384)

UNITED STATES STEEL CORPORATION,
OFFICE OF THE PRESIDENT.
New York, May 4th, 1917.

Mr. A. F. BANKS,
President, Elgin, Joliet & Eastern Ry. Co.,
Chicago, Ill.

DEAR SIR: Acknowledging receipt of your letter of the 25th April concerning U. S. Fuel Co.'s price for coal for second quarter of 1917.

We understood the Inter-Company price list had been sent you quarterly, but note that this has not been the case. However, the prices charged you right along for coal have been those shown by the list in question.

You mention you pay subsidiary manufacturing companies their current market prices for finished materials purchased from them. The U. S. Fuel Co.'s price for coal is likewise their price for all their sales.

Their coal prices is governed largely by commercial prices prevailing for coal in the Chicago District. For a long time past it has been relatively low and generally, we are advised, somewhat lower than the average price coal commanded in the district. But their prices have not returned them a fair profit on the investment. Now, however, that prevailing prices have advanced largely, they have followed the market to a certain extent. As you know, their price of $1.80 for the second quarter is very much below current prices generally. Illinois Steel Co. has just made a large purchase of coal at about $3.00 per ton. The increase in wage rates effective May 1st will increase U. S. Fuel costs about 20 cents per ton. On the basis of these costs it will be a question whether their $1.80 price will be commensurate. This will undoubtedly be carefully considered before prices are fixed for the second quarter.

It is appreciated this advance in price will increase your operating expenses. But this is also true of many of your other supplies and expenses. It is something every railroad is facing under prevailing conditions.

We have written you in detail on this matter, desiring to present a complete exposition of the situation in order that you may fully understand the price in question was arrived at from a full and fair consideration of the interest of all parties concerned.

Yours very truly,

(Signed) J. A. FARRELL,
President.

[Copy.]

[Copy]

(Purchasing Agent's File in re Quarterly and Weekly Report of Purchases)

No. 30.

UNITED STATES STEEL CORPORATION,
71 Broadway, New York, New York, February 26th, 1919.

To All Purchasing Agents

Mr. C. H. KENZEL,
Purchasing Agent, Elgin, Joliet & Eastern Railway Co.,
Chicago, Ill.

DEAR SIR: We have sent you under separate cover new forms for reporting Weekly Purchases.

We will be glad to have you report purchases amounting to $500, or over, which will be of interest to the Sales Managers.

The Headquarter's Address of the Sellers should Always be shown, but it is not necessary to report the Local or Branch address.

Please mail each Monday for the previous week.

In case there are no purchases, we wish to be notified so that our records will be complete.

Very truly yours,

(Signed) JOHN B. CARSE,
Chairman, Purchasing Agent's Committee.
MORSE.

[Copy]

(Purchasing Agent's File in re Quarterly and Weekly Report of Purchases)

No. 36.

UNITED STATES STEEL CORPORATION,
71 Broadway, New York, April 8th, 1919.

Quarterly Reports of Purchases

Mr. C. H. KENZEL,
Purchasing Agent, Elgin, Joliet & Eastern Railway Co.,
Chicago, Ill.

DEAR SIR: In compiling Quarterly Reports of Purchases, it will facilitate the work in this office if you will kindly observe the following:

1. Arrange in strictly Alphabetical order. (See General Report.)
2. Omit cents columns. Amounts less than fifty cents, not to be considered; amounts of fifty cents, or over, to be considered as one dollar.
3. Leave double space between each firm and several spaces between each Initial letter.
4. If possible use machines with Pica type.
5. Show correct Headquarter's Address of each firm. Not necessary to show States for Prominent Cities like Chicago, New York, Philadelphia, etc. No Street addresses required.
6. Segregate the different Standard Oil Companies, as follows:

Standard Oil Co. of California.			Standard Oil Co. of Nebraska.		
" " "	Indiana.		" " "	New Jersey.	
" " "	Kansas.		" " "	New York.	
" " "	Kentucky.		" " "	Ohio.	

7. Consolidate All purchases from one firm, instead of showing several purchases from the same firm.
8. Send Original to this office. If Report covers more than two or three pages, mail flat, instead of folded.
9. Show Total for Quarter after last entry.

Please acknowledge receipt.

Thanking you for giving this matter attention, we remain,

Very truly yours,

(Signed) JOHN B. CARSE,
Chairman, Purchasing Agent's Committee.
MORSE.

FLM/R

[Copy]

(Purchasing Agent's File in re Quarterly and Weekly Report of Purchases)

UNITED STATES STEEL CORPORATION,
71 Broadway, New York, March 3rd, 1920.

Mr. C. H. KENZEL,
Purchasing Agent, Elgin, Joliet & Eastern Railway Company,
208 South La Salle St., Chicago, Ill.

DEAR SIR: Referring to Weekly and Quarterly Reports of Purchases:

Please furnish the Weekly Report beginning with the week ending Saturday, March 6th, and the Quarterly Report for the Quarter ending June 30th, 1920.

We attach copy of General Letter No. 30, of February 26th, 1919, regarding compilation of the Weekly Report, and copy of General Letter No. 36, of April 8th, 1919, regarding compilation of the Quarterly Report.

We have mailed you a supply of blanks for both of these Reports.

Please acknowledge receipt.

Thanking you for giving this matter attention, we remain,

Yours very truly,

(Signed) JOHN B. CARSE,
Chairman, Purchasing Agents' Committee.
MORSE,

[Copy]

(Purchasing Agent's File in re Quarterly and Weekly Report of Purchases)

K–90499
MARCH 6, 1920.

Mr. JOHN B. CARSE,
Chairman, Purchasing Agent's Committee,
U. S. Steel Corporation, New York, N. Y.

DEAR SIR: It is with pleasure that I take the first opportunity of responding to one of your communications, viz, that of March 3rd, in regard to the inauguration by this company of the weekly and quarterly reports as referred to.

We will arrange to send the quarterly report for the one ending June 30th, and weekly report beginning with the present week.

Yours truly,

Purchasing Agent.

CHK–H

[Copy]

(Purchasing Agent's file in re: report of purchases to Chairman, Purchasing Agent's Committee, U. S. Steel Corp.)

UNITED STATES STEEL CORPORATION.
New York City, New York, January 4th, 1924.

Mr. A. F. BANKS,
President, Elgin, Joliet & Eastern Railway Co.,
208 South La Salle St., Chicago, Ill.

DEAR SIR: Will you kindly send the usual report for the purchase of Underframes from the James G. Heggie & Sons, $250,000.

Thanking you for giving this matter attention I remain,
Very truly yours,

(Signed) JOHN B. CARSE,
Chairman, Purchasing Agents' Committee.

JBC/R

[Copy]

(Purchasing Agent's file in re: report of purchases to Chairman, Purchasing Agent's Committee, U. S. Steel Corporation)

UNITED STATES STEEL CORPORATION.
New York, January 14th, 1924.

Mr. A. F. BANKS,
President, Elgin, Joliet & Eastern Railway Co.,
208 South La Salle St., Chicago, Ill.

DEAR SIR: Replying to your favor of January 8th—

It is desirable to have on file in New York copies of all contracts, with competitive bids, made by the Subsidiary Companies, whether covered by Appropriations or otherwise.

It is customary for the Subsidiary Companies to report on purchases and contracts under Appropriations in amounts of $500 or over. In the case of purchases and contracts not made under Appropriations, it will be satisfactory for your company to report only items of $1,000 and over.

We will be glad to receive the usual data for the car frames purchased from James G. Heggie & Sons on December 18th.

Thanking you for giving this matter your attention, we remain,
Very truly yours,

(Signed) JOHN B. CARSE,
Chairman, Purchasing Agent's Committee.

JBC/EC

[Copy]

(Auditor's File 23–B Statement File)

K–17052–799

ELGIN, JOILET AND EASTERN RAILWAY COMPANY,
208 South La Salle Street, Chicago, Ill., March 5, 1928.

Mr. C. G. HOLM,
Asst. General Auditor, Building.

DEAR SIR: In line with talk this morning, I have a communication from J. B. Carse, Chairman, Purchasing Agents' Committee, on the subject of Report of Payments made by Subsidiary Companies on account of Purchases, stating he is under the impression that these statements are not complete.

He requests that in making out report for the First Quarter of 1928 we include all companies from which purchases are made, not only for materials, supplies, and equipment, but also to include gas, water, power, and telephone and telegraph service such as we secure from Public Utility Companies. The report, however, to be along the usual lines as has been previously prescribed.

Yours truly,

(Signed) C. H. KENZEL.
Purchasing Agent.

CHK:MF

[Copy]

(Auditor's File 23–B Statement File)

8–2–23 S
JUNE 2ND, 1932.

Mr. JOHN B. CARSE,
Chairman, Purchasing Agents' Committee,
United States Steel Corporation,
71 Broadway, New York City, New York.

DEAR SIR: Kindly furnish supply of blank forms for the purpose of filing quarterly report covering amounts paid for material and supplies purchased from other than subsidiary companies, and oblige.

Yours truly,

Assistant General Auditor.

TJD/ASM

221 *Government's Exhibit K*

[File endorsement omitted.]
[Title omitted.]

Documents called for by Subpoena Duces Tecum to George K. Leet, Secretary, United States Steel Corporation

1. Annual reports to stockholders for the years 1905, 1910, 1928, 1929, 1930, 1931, and 1932.

2. Letter of advice in pamphlet form to subsidiary companies concerning appropriations for construction, improvements, etc., dated December 1907, and all supplements thereto and reissues thereof.

3. Circular, Form 32C, issued to officers and employes of the United States Steel Corporation and of its subsidiary companies, by George K. Leet, Secretary, United States Steel Corporation, on February 2, 1924, February 3, 1925, February 9, 1926, February 8, 1927, and all succeeding issues thereof.

4. By-laws of the United States Steel Corporation, and all amendments thereto.

5. Circular dated November 11, 1901, addressed to subsidiaries of the United States Steel Corporation, instructing said subsidiaries to set up "United States Steel Corporation Clearance Account" (United States Steel general file).

6. United States Steel Corporation inter-company price list issued quarterly for the years 1929, 1930, 1931, 1932, and 1933.

United States Steel Corporation

Letter of Advice to Subsidiary Companies Concerning Appropriations for Construction, Improvements, Etc. December 1907

UNITED STATES STEEL CORPORATION,
OFFICE OF THE PRESIDENT,
New York, December 18, 1907.

To Presidents of Subsidiary Companies:

Various recommendations have, from time to time, been issued during the past six years concerning the submission of appropriations for construction, improvement, and unusual maintenance work; also, concerning the limitations, it was expected subsidiary companies would observe in prosecuting work for which appropriations were formally recommended by this Corporation. It is now considered advisable to issue this general letter for the purpose of concentrating in one circular some of the more important features of what has previously been said, and to add some new suggestions.

For What Proposed Work or Expenditures Requests for Recommendations Covering Appropriations Should Be Submitted

We think no piece of construction, improvement, or unusual maintenance work should be undertaken which will exceed $5,000 in cost without the formal recommendation of the Corporation; and that where it is decided to undertake work of above character costing a less amount, the same should be fully and promptly reported on the usual appropriation blanks. Of course, all properties must be maintained and kept in good order, and all such expenditures charged to the usual operating costs. This is especially true of all expenditures looking to the safety of the properties in your charge. But where unusual maintenance and renewals are undertaken that will notably affect costs or involve large outlays, the same should be first submitted for formal recommendation. Whenever operating conditions make it imperative to proceed without delay with any unusual repair or maintenance work, arising from disasters due to Providential and accidental causes, the same should be undertaken without waiting for an appropriation to be formally recommended. In such cases, however, appropriation requests should be promptly submitted and statement made that the work has commenced.

The foregoing contemplates that appropriation requests should be submitted for all proposed outlays chargeable to Property or Plant Account, and to Improvement or Replacement Funds or Accounts, including stripping at mines. Similar requests are also desired for unusual maintenance and renewals, the cost of which is to be included either in producing costs or operating expenses, or to be charged to Funds created from such costs or expenses; also, for all expenditures in excess of $5,000 for special investigations and experimental work. No specific definition can be made to designate what character of work shall be considered "unusual maintenance and renewals", but, generally speaking, they comprehend those which it is the practice to undertake only after they are brought to the attention and receive the approval of the President of the Subsidiary Company; those which, according to your own regulations, are considered of such import or of such unusual character as to require the review stated.

The Corporation is particularly concerned in the total expenditure to be made and the scope of the work to be undertaken, and, in returning appropriation blanks, care should be taken to specify the total estimated cost without reference to whether the same will be paid from existing reserve funds, from funds to be established, from surplus earnings, or from new capital to be supplied, although in case any part or all of the work is to be covered from funds, that fact should be noted.

Preparation and Submission of Appropriation Requests

Recommendations for appropriations should be requested on the standard blank forms supplied for such purpose. The instructions printed on the blanks indicate the number of copies to be submitted and the channels through which the same should be transmitted. It is suggested that, so far as possible, each appropriation be confined to work at a single plant or location, and to work which is specific to a certain unit at such plant or location. The object of this is to facilitate the closing of appropriations. If appropriations should cover a number of improvements of a different character, although at the same plant, it would necessitate holding the appropriation open until all are completed.

So far as the same is practicable, a full description of the proposed work, and the reasons for undertaking the same, should be set forth on the face of the appropriation blanks. If more space is required than the standard blank furnishes, additional pages should be inserted. Detailed information concerning the proposed work should not be left to transmittal letters, unless the same is of a confidential nature. By making the appropriation blank itself the medium through which the work is described, a permanent record is completed in this respect in all the departments concerned.

The appropriation blank should state which one of the three general classes the work is to be considered as coming under:

(1) Necessary for successful operation of the plant.

(2) For greater economies in operation.

(3) For increased production.

If any portion of the appropriation is to be considered under the last two classes, the economy or increased production is to be stated.

Estimates of cost of the proposed work should be carefully made with reference to the plans and specifications. There should be shown on the appropriation blank, or on an auxiliary schedule accompanying the same, a detail of the estimated cost classified per the Card of Accounts and Sub-Sections thereof which will be followed in distributing the actual expenditures when made. In case of appropriations covering rebuilding and replacement work if there will be any salvage recovered from the dismantled property, the estimated value thereof, if determinable, should be considered in making up the new appropriation and a specific credit item shown therefor. But if the value of the salvage is problematical and not likely to be realized promptly, it would doubtless be preferable to make no allowance for the same in estimating the amount of the appropriation. In such an event, anything recovered for salvage should not be credited to the expenditures made against the original amount of the appropriation, although it will be credited the same ledger account to which the original appropriation was charged.

So far as practicable there should be transmitted to the Corporation with the appropriation request, a general drawing showing the

proposed plan and arrangement of the new work. An equipment list should also be furnished with the detailed estimate which accompanies the appropriation request. This equipment list should be divided as per the general sections of the Card of Accounts, and under each section should be stated the principal equipment contemplated under that section, giving the number, size, or capacity of the various appliances, apparatus, buildings, etc.

Occasionally it may be necessary to request appropriations for certain work before detailed plans can be worked up and classified estimate of cost made per the Card of Accounts. In such case it should be plainly indicated that the estimated expenditure is only "tentative", and as soon as may be after the appropriation is recommended a detailed estimate of cost per Card of Accounts should be forwarded. If it then appears the amount required differs from the tentative estimate the records will be corrected accordingly. It is hoped, however, there will be comparatively few appropriations requested on this basis. The undertaking of the more important classes of work are, or should be, considered for a sufficient length of time to enable detailed plans to be made, while the less important are generally of a nature which permits a reasonably accurate forecast of the cost.

Modification of plans after appropriations are formally recommended

It is not the intention of the Corporation to give any advice that will interfere with securing the best results. If, after the work has been recommended, or as the work progresses, it is believed better results can be obtained by modification of the original plans, there should be no hesitancy about making such changes, provided no change is made in any basic idea on which the original appropriation was premised, and further that the expense therefor will not increase the cost by 10% or more of the appropriation, or by the sum of $5,000 or more. But any such changes should promptly be reported to the Corporation. In case, however, the change does modify any basic idea contemplated in the original appropriation, it should be reported to the Corporation and endorsement thereof obtained before the change is authorized or contracts let, and if additional expense will be entailed to the extent above indicated, a supplemental appropriation request covering the amount should be submitted.

In connection with the foregoing, it will be understood that in case the expenditures against an appropriation, or any section of an appropriation, underrun the estimate, the surplus should not be used for other purposes. All such additional work and expense should be covered by new or supplemental requests.

Overruns on Appropriations

Overruns on appropriations should be considered with reference to the aggregate expenditures against the appropriation compared

with the total amount authorized. In case expenditures on certain sections of a particular appropriation should underrun the estimates for such sections, while other sections overrun the estimates, the latter (assuming the excess does not arise from change in plans) need not be covered by a supplemental appropriation unless the net excess equals the sum of $5,000 or amounts to 10% of the whole amount of the appropriation. After an appropriation is entered and the formal estimate made for the respective sections of the work, transfer of "estimated cost" from one section to another should be avoided, unless the same is made to cover a modification of plans or additional work.

Whenever it is apparent the expenditures under any appropriation formally recommended by the Corporation will exceed by $5,000, or by 10% or more, the amount first recommended, an additional appropriation request should be submitted covering the amount of the overrun. These supplemental requests should give full particulars and reasons for the overrun. Details should be transcribed on the face of the blanks. Supplemental appropriations for overruns should be made on separate blanks and not included in an appropriation request for other work at the same plant.

The Presidents of the subsidiary companies are particularly urged to see that diligence is used from time to time during the progress of the work to ascertain whether or not the expenditures are being, and will be, confined to the amounts appropriated; and when it appears probable the expenditures will exceed the appropriations report of the same should immediately be made and supplemental appropriations requested for the amount of the overrun.

Closing of Appropriations

While it is desirable that the charging of expenditures against an appropriation be stopped, and the appropriation account closed, as soon as practicable after the improvement reaches a state when it is in full operation, still the appropriation should not be closed and charges diverted to some other account until all the work originally contemplated is fully completed. In case, however, some sub-section of the work is postponed, and the postponement is for an indefinite period, the entire appropriation should be closed notwithstanding, and the allowance for the section concerned be cancelled. If later it is desired to undertake this work, a new appropriation should be requested. If the postponement is temporary only, the appropriation should, if practicable, be closed with respect to all sections except the particular one concerned. This plan will avoid the keeping open indefinitely of appropriations which might result in many small and petty items being charged that it would be conservative to absorb in operating expenses. This does not refer to charges covered by belated bills and contract settlements.

As soon as appropriations are closed a report in duplicate should be made for the same, showing among other things the estimated amount appropriated and classified per Card of Accounts and the actual expenditures according to such classification. Upon the closing of the appropriation an equipment list should be filed with the statement of actual cost showing the actual equipment installed. These reports should be forwarded the Comptroller who will advise concerning the same.

W. E. COREY, *President.*

UNITED STATES STEEL CORPORATION,
OFFICE OF THE PRESIDENT,
New York, November 22, 1909.

Appropriations

To Presidents of Subsidiary Companies:

When appropriations are recommended by the Corporation for additions and betterments, such recommendations are, as a general rule, decided on, among other things, upon representations by the Presidents of the subsidiary companies that the proposed expenditures are necessary for the maintenance, betterment, or extension of the properties and the business, and the belief that the moneys thus appropriated will be used forthwith and within a reasonable period of time for the purposes for which set aside. It is not the intention to recommend requests for appropriations merely for the purpose of placing in the hands of subsidiary companies the privilege of expending moneys for particular purposes at some indefinite time when, in the judgment of their Presidents, it may seem desirable to proceed with such work. Necessity for making the improvements at the present, or at a very early date, is the prime factor which should underlie requests for appropriations.

It is appreciated that undoubtedly this heretofore has been the prevailing idea in submitting appropriation requests, but it not infrequently has transpired that, after being granted, changed conditions have caused a long deferment in the commencement of the work, the abandonment of some parts of the proposed work, the postponement of some sections, and in some cases the abandonment of the entire appropriation. The action of the subsidiary companies in this respect, in using appropriated moneys only as conditions demanded that the expenditures be made, is commended. But in order to keep the Corporation advised promptly, and in a systematic manner, of the situation when any of the above named conditions prevail, it is desired that from time to time you submit reports on a special form to be used for that purpose. A supply of these forms will be sent to you.

Overruns on Appropriations

Attention is called to that section of Letter of Advice of December 18, 1907, relating to overruns, particularly the following:

"* * * when it appears probable the expenditures will exceed the appropriations report of the same should immediately be made and supplemental appropriations requested for the amount of the overrun."

It is found that a number of the companies have deferred submitting appropriations for overruns until the work was completed, it being stated that it was preferred to do this in order to ascertain precisely what the overrun would amount to and make up the supplemental appropriation accordingly. Supplemental appropriations should be submitted as soon as it is apparent there will be an overrun and on the basis of what it is then estimated it will amount to.

Submitting Appropriations and Details of Estimates Per Cards of Accounts

Since the issuance of the Letter of Advice relating to appropriations dated December 18, 1907, there has been material improvement in the matter of details shown on appropriation blanks of both the work to be done thereunder and the estimates therefor. But further improvement can undoubtedly be made, especially on the larger and more important units of work. Further and detailed advices covering this matter have been issued by Mr. Reis, and it is requested that these be fully observed. Unless the details which may be required are supplied, appropriation requests will not be considered as complete. It is also suggested that companies contemplating the construction of units of a kind similar to those installed by other companies, avail themselves of the latter's detail of cost of installation in making up the estimate of the amount of appropriations desired.

Closing of Appropriations

Attention is called to the advices given in letter of December 18th, 1907, concerning this feature. No improvement in expediting the closing of appropriations seems to have been made. The reasons frequently assigned for holding the same open are that some small sub-section of the work originally contemplated has not yet been completed. It is hoped the new form of report now to be made in connection with appropriation work will aid in the accomplishment of the purpose in question. The Letter of Advice of December 1907 contained the following:

"In case some sub-section of the work is postponed, and the postponement is for an indefinite period, the entire appropriation should

be closed notwithstanding, and the allowance for the section concerned be cancelled. If later it is desired to undertake this work, a new appropriation should be requested."

It is feared this suggestion has not been fully appreciated, due consideration being given to the liberal and prompt manner which the Corporation has given its recommendation to requests for permission to make improvements which the interests of the properties and their business required.

Appropriations Under $5,000 Each

According to existing regulations no appropriation of $5,000 or under need first require the recommendation of the Corporation. But this regulation should not be interpreted to mean that they are so exempted general improvements of the same class which may, at a particular time, be decided upon for installation at several departments within a single plant, although the cost of installation in each department may involve less than $5,000. In such cases one appropriation should be submitted for the aggregate amount required.

In conclusion, it is expected the Presidents or their assistants have before them at all times records showing accurately and up to date the conditions of, and progress relating to, all work for which appropriations are made, and that features connected therewith are frequently reviewed by them with their assistants and departmental chiefs, thus enabling the Presidents to promptly communicate to the Corporation in the formal manner herein provided for, the status of all appropriations, both as to the policy being pursued in conducting or deferring the work, and progress i ng made thereunder.

W. E. COREY, *President.*

UNITED STATES STEEL CORPORATION,
OFFICE OF THE PRESIDENT,
New York, August 22, 1910.

Appropriations

To Presidents of Subsidiary Companies:

Please be advised it is desired appropriation requests for additions to producing or operating units, or for extensions and improvements to the plants and properties shall be accompanied by appropriation requests for any additional facilities or re-arrangement of existing facilities, which, in order to properly serve the new work called for by the primary appropriation, may be necessary in proprietary departments within the same company, or by transportation or other subsidiary companies allied with or operating in connection with the company. To this end the President of a company originating an appropriation as indicated, will confer, before

submitting the same, with the Presidents of other subsidiary companies which may in turn be required to extend their facilities by reason thereof, and arrange that the appropriations for all companies necessitated directly or indirectly because of the primary work will be presented at the same time. We shall then know at the outset how much of a total investment, from the viewpoint of the corporation as a whole, is really involved in appropriation requests.

One exception will, however, be made, in part, to the above rule, namely, in the construction of additional blast furnaces. In such cases the company originating the appropriation need not extend the above rule beyond auxiliary departments in the same company and the subsidiary railroad serving the plant, i. e., there need not be considered the further investment needed to produce the additional requirements of raw materials and the transportation thereof, except as to the transportation which is to be supplied by the railroad reaching the plant.

W. E. COREY, *President.*

----------Company.

Report on Work Authorized Which Has Been—

(a) Abandoned entirely.
(b) Indefinitely postponed.
(c) Temporarily postponed.
(d) In progress but proceeding with a minimum of expedition.
(e) Plan of construction changed.

Appropriation No. —

For:
Amount authorized, $———. Expended to date, $———.

Date, ----------. ----------,

President.

(See instructions on back of this form)

Instructions

This report should be rendered in case any subsection or part of the work originally authorized is subject to the conditions named in the caption, as well as if the entire work authorized is in such shape.

If any part of the work originally authorized is completed, reference should be made thereto, when completed, cost thereof and amount included in the estimate for the same. Similar information as to original estimate and amount expended to date account of the

same should be given for any part of the work reported under each the captions (a), (b), (c), (d), (e).

Full reasons should be given why work has been abandoned, postponed, plan changed, or is being proceeded with slowly.

In connection with work postponed, either temporarily or indefinitely, opinion should be expressed whether it would not be advisable to cancel and close the appropriation therefor.

This report when once submitted for any one appropriation does not exempt the filing of subsequent reports on the same appropriation if it yet remains open and new facts concerning the work have developed.

This report should be submitted in Triplicate to the President of the U. S. Steel Corporation; a copy should also be filed with the Auditor of the subsidiary company concerned.

UNITED STATES STEEL CORPORATION,
OFFICE OF THE PRESIDENT,
April 4, 1912.

Appropriations under $5,000 each

DEAR SIR: In view of the fact that the aggregate of so-called minor appropriations submitted for amounts under $5,000 each equals a very large amount, we request that careful scrutiny and consideration be given to all such appropriations, particularly those covering additional facilities and extensions and those for safety appliances, welfare work, and sanitation.

While the plants and properties must be maintained in good working order, yet, in view of existing conditions, care should be taken to confine all betterment work to only that which is absolutely essential or mandatory. We recommend that if you have any "Company" appropriations that contemplate work as to which there may be a question whether it would come under the foregoing designations, that you submit the same to us before permitting your people to proceed with the work.

It is not our idea that any change should be made in the existing arrangement that "under $5,000 appropriations" need not be formally recommended by us, but as to those of the particular classes mentioned we should like to informally review them before they are proceeded with.

Yours very truly,

J. A. FARRELL, *President.*

Mr. W. J. FILBERT,
Comptroller, Building.

47256—36——20

UNITED STATES STEEL CORPORATION.
OFFICE OF THE COMPTROLLER.
May 10, 1920.

To Presidents of Subsidiary Companies:

I beg to advise that on May 4th the Finance Committee, by resolution duly adopted, ordered as follows:

"That all original appropriations for improvements which involve an expenditure of less than $10,000 each (maximum heretofore being $5,000), or any appropriations for over-runs which with the original appropriation are less than $10,000, need not be presented to the Finance Committee for recommendation."

Under the above ruling, the limit of appropriations for improvements which may be entered as so-called "Company" appropriations and the work thereunder commenced without first obtaining recommendation of the Finance Committee, is raised from $5,000 to $10,000, but all such appropriations should as heretofore be promptly forwarded to the Corporation in accordance with the existing rules.

Will you please advise such officials and departments of your company as are interested.

Yours truly,

W. J. FILBERT, *Comptroller.*

UNITED STATES STEEL CORPORATION.
OFFICE OF THE COMPTROLLER.
July 6, 1920

To Presidents of Subsidiary Companies:

Referring to my letter of May 10, 1920, advising of resolution of Finance Committee to effect that original appropriations for improvements which involve an expenditure of less than $10,000 each need not be presented to the Finance Committee for recommendation.

Some of the companies, we find, are interpreting this to mean that expenditures for purchase of additional real estate and lands involving more than $5,000 and less than $10,000 need not first be submitted in the usual way for recommendation by the Finance Committee. This was not the intent of the resolution, nor do we think the wording of the resolution indicates that the provision extends to purchase of real estate and land. Please note that it refers to original appropriations for "improvements." We have never used the term "improvements" as extending to and embracing additional real estate and land purchases.

Will you kindly be governed accordingly in connection with desired purchases of real estate and lands.

Yours truly,

W. J. FILBERT, *Comptroller.*

UNITED STATES STEEL CORPORATION,
OFFICE OF THE PRESIDENT.
January 22, 1921.

To Presidents of Subsidiary Companies:

Under advices issued last May, the amount of an addition and improvement which could be undertaken without formal recommendation by the Corporation was raised to $10,000. However, we beg to advise that in the case of expenditures for welfare work which involve the purchase of land by the company, we desire to pass upon any such work before the land is purchased and the work undertaken, even though the aggregate cost of the land and the improvements to be made will not exceed $10,000. Therefore, all proposed outlays for purchase of land and improvements to be made thereon in connection with welfare work should be covered by appropriations first submitted to the Corporation for its review and recommendation.

Your truly,

J. A. FARRELL, *President.*

[Copy]

FINANCE COMMITTEE MEETING,
March 10th, 1925.

On motion, and by the affirmative vote of all present, it was

"Resolved: That all original Appropriations for Improvements Which Involve an Expenditure of $10,000 or Less Each, or any appropriations for overruns which, with the original appropriation, do not exceed $10,000, need not be presented to the Finance Committee for recommendation."

G. K. L.

UNITED STATES STEEL CORPORATION,
OFFICE OF THE COMPTROLLER,
April 21, 1932.

(Sent to all Presidents of subsidiary companies)

DEAR SIR: Please be advised that on April 19, 1932, the Finance Committee of the Corporation adopted the following resolution:

"* * * that original appropriations for improvements which involve an expenditure of $5,000 or less (maximum heretofore being $10,000), or any appropriations for overruns, which with the original appropriations do not exceed $5,000, need not be presented to the Finance Committee for consideration."

Under the above ruling the limit of appropriations for improvements which may be entered as "Company" appropriations is reduced from $10,000 to $5,000. However, all Company Appropriations should, as heretofore, be forwarded to the Corporation in accordance with existing practice.

The above resolution is not intended to modify the present procedure with respect to Real Estate purchases, i. e., purchases involv-

ing an expenditure of $5,000 or more are subject to recommendation by the Finance Committee before purchase and purchases involving an expenditure of less than $5,000 are subject to the approval of the President or Chairman of the Corporation.

Will you please advise the officials and departments of your company, who may be interested, of the above ruling.

Yours truly,

(Signed) H. L. AUSTIN.
Comptroller.

Approved:
W. A. IRVIN, *President.*

UNITED STATES STEEL CORPORATION.
OFFICE OF THE COMPTROLLER.
July 20, 1932.

To Accounting Officers of Subsidiary Companies:

At the present time there is a lack of uniformity in the treatment on appropriations of salvage credits and second-hand material and equipment charged to Property Account.

Some of the companies deduct the salvage recovered through the retirement of old facilities from the gross expenditures shown on appropriation requests. Others do not follow this plan, but uniformly account for salvage in connection with write-off entries. Some of the companies include the value of second-hand equipment used in the amount of the appropriation; others do not do so.

After consideration by our people, it has been decided to recommend the observance of the following rules:

1. Salvage which arises in connection with work, the cost of which work is to be charged to repairs and maintenance, Blast Furnace Relining Fund, or to operating reserves, to be treated as a credit applicable to such cost.

2. Salvage which arises in connection with construction or reconstruction work involving the retirement of old facilities should not be included as a credit on the face of the appropriation estimate, but should only be shown on the third page of the appropriation as a credit to be taken into consideration in making the write-off entry for the property retired.

NOTE.—The word "salvage", as above used in paragraphs 1 and 2, refers exclusively to the value of old material reclaimed or second-hand equipment retired and replaced by substitution of something else; obviously, it does not refer to surplus or left-over material not required on the job and which is to be transferred to inventory.

3. All appropriations should include, as a part of the cost, the value of second-hand material and equipment to be used. The accounts under this plan will show the total cost of the new or rebuilt facilities. The establishment of this record is important for depreciation purposes and for future use when the property is retired.

So far as practical, it is desired to show on the face of each appropriation request a division of the total cost as between (a) transfer or second-hand value of old facilities, and (b) estimated cost of labor, new material, and expense.

The phrase "Second-hand material and equipment", as used in this letter, means any such material and equipment previously used by the Company submitting the appropriation request or by any other subsidiary of the Steel Corporation.

Yours truly,

(Signed) H. L. AUSTIN.
Comptroller.

HLA–V

UNITED STATES STEEL CORPORATION,
OFFICE OF THE COMPTROLLER.
July 30, 1932.

(Sent to all Presidents of Subsidiary Companies)

DEAR SIR: Referring to letter dated April 21, 1932, reporting the action taken by the Finance Committee of the Corporation under date of April 19, 1932, reducing the limit of appropriations requiring recommendation of the Finance Committee from $10,000 to $5,000.

Under date of July 20, 1932, a letter was sent to the accounting officers of the subsidiary companies advising of the recent decision to the effect that all appropriations should hereafter include as a part of the cost the value of second-hand material and equipment used. One of the companies has inquired whether the $5,000 limit will now apply to the total amount of each appropriation or whether it will only apply to the cost exclusive of the value of second-hand material and equipment used. Please be advised that in future the $5,000 limit will apply to the total amount of each appropriation including the value of second-hand material and equipment used. The result will be that certain appropriations heretofore treated as company appropriations will now be classified as appropriations requiring the recommendation of the Finance Committee.

Yours truly,

(Signed) H. L. AUSTIN.
Comptroller.

HLA–So.

Numbers
U. S. S._____
Co._____
_____ COMPANY,
_____ 19__

_____, *President:*

An appropriation is requested for

NOTE.—Describe on this page the character of the work to be done, the detailed estimated cost thereof, reasons therefor, estimated saving in costs or increase in product which will result, etc. If more space is required, use insert page.

Title _____ *Title* _____

Recommended: _____

I approve the foregoing request and recommend an appropriation of _____ Dollars therefor.

_____, 19__.

_____

President.

The cost of the foregoing will be charged to:

MEMORANDUM OF WRITE-OFF ENTRIES TO BE MADE

Ledger value of Property:
Retired or replaced ____ $____
Less salvage to be realized (or estimated) ____ $____
Ledger value less salvage ____ $____

DISPOSITION OF ABOVE AMOUNT

To be charged to depreciation & replacement reserve ____ $____
To be charged to profit & loss, for retirement loss ____ $____
Total ____ $____

Property account:
Real estate ____ $____
Mineral properties (ex. surface) ____ ____
Depreciable property ____ ____
Motor vehicles ____ ____
Blast furnace relining & repair reserve ____ ____
Miscellaneous accounts (specify):
Dismantling expense ____ ____
Moving & rearranging existing facilities ____ ____
O. H. furnace & mixer repair reserve ____ ____
Inventory ____ ____
Operating costs ____ ____
Total ____ $____

_____

Chief Accounting Officer.

Recommended:

_____

President, U. S. Steel Corporation.

_____, 19__.

Instructions

All requests requiring the recommendation of the U. S. Steel Corporation, i. e. expenditures involving an outlay of more than $5,000 should be rendered in triplicate and transmitted direct to the President or a Vice President of U. S. Steel Corporation. As soon as an appropriation is authorized, one copy will be returned to the President of the Company interested.

Appropriation involving an outlay of $5,000 or less—excepting those for additional amounts as noted below—should be forwarded to the Comptroller and only one copy of the blank is required to be filed.

All appropriation requests for additional amounts should be forwarded to the President or a Vice-President of U. S. Steel Corporation, excepting when the aggregate amount of the original and additional appropriation is $5,000 or less, in which case they should be forwarded to the Comptroller.

Attention is particularly directed to general instructions that have been issued in regard to Construction and Improvement matters.

222 *Government Exhibit L*

[File endorsement omitted.]

[Title omitted.]

Documents called for by Subpoena Duces Tecum to George K. Leet, Secretary, United States Steel Corporation

1. Annual reports to stockholders for the years 1905, 1910, 1928, 1929, 1930, 1931, and 1932.

2. Letter of advice in pamphlet form to subsidiary companies concerning appropriations for construction, improvements, etc., dated December 1907, and all supplements thereto and reissues thereof.

3. Circular—Form 32C, issued to officers and employes of the United States Steel Corporation and of its subsidiary companies, by George K. Leet, Secretary, United States Steel Corporation, on February 2, 1924, February 3, 1925, February 9, 1926, February 8, 1927, and all succeeding issues thereof.

4. By-laws of the United States Steel Corporation, and all amendments thereto.

5. Circular dated November 11, 1901, addressed to subsidiaries of the United States Steel Corporation, instructing said subsidiaries to set up "United States Steel Corporation Clearance Account", (United States Steel general file).

6. United States Steel Corporation inter-company price list issued quarterly for the years 1929, 1930, 1931, 1932, and 1933.

UNITED STATES STEEL CORPORATION.
New York, February 2, 1924.

To the Officers and Employes of the United States Steel Corporation and of its Subsidiary Companies:

In accordance with and under the provisions of the Profit Sharing Plan adopted by the stockholders on April 18, 1921, the Board of Directors of United States Steel Corporation has set aside from the net profits for the calendar year 1923, as ascertained and declared by the Board, the Fund for the year 1923 under such Profit Sharing Plan at the rate fixed therein.

As provided and authorized by the Plan, the Committee elected by the stockholders to administer the same has selected and approved the employes of the Corporation and its subsidiary companies qualifying for participation in the Fund and has alloted the amount of the Fund to such selected and approved employes in the manner designated by the Plan.

The committee has decided that the allotment to the respective participating employes shall be distributed to them as follows: One-half in cash and one-half in Common Stock of the United States Steel Corporation at the rate of $107 per share on the conditions herein stated. Awards for $200 or less and all fractional parts of the stock proportion of awards will be paid in cash.

The payments in cash in accordance with the foregoing will be made forthwith by the Treasurer of United States Steel Corporation without deduction of normal Federal Income tax or any State Income taxes. But payments made in cash to all employes participating in the distribution will be reported by their respective employing companies to the United States Internal Revenue Department and to States, as may be required by laws, as a part of the compensation for services paid such employes during the year 1924. In case the employing companies are required to withhold any tax from these payments, the employes receiving the same will be notified by their respective companies that they will be obliged to pay to such companies any amounts of tax which may be required to be withheld and paid in connection with such distributions.

The distribution of interest in Common Stock will be made in the form of non-assignable Certificates of Interest providing for the distribution of shares of Common Stock under and upon certain conditions set forth in said certificates, which will provide, among other things, as follows:

First. That if the participant remains continually in the service of the Corporation or of one or another of its subsidiary companies until January 1, 1929, and shall during all of such time have rendered faithful and satisfactory service to such Corporation or to one or another of its subsidiary companies, then, as soon after January 1, 1929, as may be, and upon surrender of such certificate, there will be delivered to him as his property, the shares of stock referred to in the certificates issued to him as aforesaid.

Second. That until the delivery of such shares and while the employe remains in the service of the Corporation or of one of its subsidiary companies, he shall receive the dividends, if any, declared upon the shares of stock referred to in such certificate.

Third. That if before January 1, 1929, the employe shall voluntarily quit the service of the Corporation or of a subsidiary company, or shall be discharged or removed for cause by his employer, then, in either case, he shall thereby lose all interest in the said certificate and in the shares of stock referred to therein; and thereupon such shares of stock shall be held in a fund, which at the end

of the period above named will be divided pro rata among such officers and employes as shall then be entitled to the delivery of the shares of stock referred to in the Certificates of Interest held by them respectively; provided, however, that retirement under any general pension scheme at the time in effect shall not of itself cause such loss of interest.

Fourth. That if before January 1, 1929, the employe dies or becomes totally and permanently disabled while in the employ of the Corporation or of one or another of its subsidiary companies, or retires under any general pension scheme then in effect, the shares of stock referred to in the certificate issued to him shall be delivered to his estate (or to him, if so disabled or retired), together with a pro rata amount of the fund, if any, which has accrued up to the time of his death, disability or retirement, by reason of any loss of interest as specified in the preceding paragraph.

Fifth. That all questions relating to the interests, rights, and claims of any officer or employe in, or growing out of, the proposed distributions and fund above specified shall be finally determined and disposed of in its discretion by the Committee of Stockholders of the United States Steel Corporation, elected from time to time to administer the Profit Sharing Plan, as said Committee may be constituted when and as any questions arise.

By order of the Committee of Stockholders referred to in the foregoing.

UNITED STATES STEEL CORPORATION,
GEO. K. LEET, *Secretary.*

UNITED STATES STEEL CORPORATION,
New York, February 3, 1925.

To the Officers and Employes of the United States Steel Corporation and its Subsidiary Companies:

In accordance with and under the provisions of the Profit Sharing Plan adopted by the stockholders on April 18, 1921, the Board of Directors of United States Steel Corporation has set aside from the net profits for the calendar year 1924, as ascertained and declared by the Board, the Fund for the year 1924 under such Profit Sharing Plan at the rate fixed therein.

As provided and authorized by the Plan, the Committee elected by the stockholders to administer the same has designated the employes of the Corporation and its subsidiary companies qualifying for participation in the Fund and has allotted the amount of the Fund to such designated employes in the manner provided by the Plan.

The committee has decided that the allotment to the respective participating employes shall be distributed to them as follows: Sixty per cent in cash and forty per cent in Common Stock of the United States Steel Corporation at the rate of $125 per share on the conditions herein stated. Awards for less than $312.50 and all fractional parts of the stock proportion of awards will be paid in cash.

The payments in cash in accordance with the foregoing will be made forthwith without deduction of normal Federal Income tax or any State Income taxes. But payments made in cash to all employes participating in the distribution will be reported by their respective employing companies to the United States Internal Revenue Department and to States, as may be required by laws, as a part of the compensation for services paid such employes during the year 1925. In case the employing companies are required to withhold any tax from these payments, the employes receiving the same will be notified by their respective companies that they will be obliged to pay to such companies any amounts of tax which may be required to be withheld and paid in connection with such distributions.

The distribution of interest in Common Stock will be made in the form of non-assignable Certificates of Conditional Interest providing for the distribution of shares of Common Stock under and upon certain conditions set forth in said certificates, which will provide, among other things, as follows:

First. That if the participant remains continually in the service of the Corporation or of one or another of its subsidiary companies until January 1, 1930, and shall during all of such time have rendered faithful and satisfactory service to such corporation or to one or another of its subsidiary companies, then, as soon after January 1, 1930 as may be, and upon surrender of such certificate, there will be delivered to him as his property, the shares of stock referred to in the certificates issued to him as aforesaid.

Second. That until the delivery of such shares and while the employe remains in the service of the Corporation or of one of its subsidiary companies, he shall receive the dividends, if any, declared upon the shares of stock referred to in such certificate.

Third. That if before January 1, 1930, the employe shall voluntarily quit the service of the Corporation or of a subsidiary company, or shall be discharged or removed for cause by his employer, then, in either case, he shall thereby lose all interest in the said certificate and in the shares of stock referred to therein; and thereupon such shares of stock shall be held in a fund, which at the end of the period above named will be divided pro rata among such officers and employes as shall then be entitled to the delivery of the shares of stock referred to in the Certificates of Conditional Interest held by them respectively; provided, however, that retirement under any general pension scheme at the time in effect shall not of itself cause such loss of interest.

Fourth. That if before January 1, 1930, the employe dies or becomes totally and permanently disabled while in the employ of the Corporation or of one or another of its subsidiary companies, or retires under any general pension scheme then in effect, the shares of stock referred to in the certificate issued to him shall be delivered to his estate (or to him, if so disabled or retired), together with a pro rata amount of the fund, if any, which has accrued up to

the time of his death, disability or retirement, by reason of any loss of interest as specified in the preceding paragraph.

Fifth. That all questions relating to the interests, rights and claims of any officer or employe in, or growing out of, the proposed distributions and fund above specified shall be finally determined and disposed of in its discretion by the Committee of Stockholders of the United States Steel Corporation, elected from time to time to administer the Profit Sharing Plan, as said Committee may be constituted when and as any questions arise.

By order of the Committee of Stockholders referred to in the foregoing.

UNITED STATES STEEL CORPORATION,
GEO. K. LEET, *Secretary.*

UNITED STATES STEEL CORPORATION.
New York, February 9, 1926.

To the Officers and Employes of the United States Steel Corporation and of its Subsidiary Companies:

In accordance with and under the provisions of the Profit Sharing Plan adopted by the stockholders on April 18, 1921, the Board of Directors of United States Steel Corporation has set aside from the net profits for the calendar year 1925, as ascertained and declared by the Board, the Fund for the year 1925 under such Profit Sharing Plan at the rate fixed therein.

As provided and authorized by the Plan, the Committee elected by the stockholders to administer the same has designated the employes of the Corporation and its subsidiary companies qualifying for participation in the Fund and has allotted the amount of the Fund to such designated employes in the manner provided by the Plan.

The Committee has decided that the allotment to the respective participating employes shall be distributed to them as follows: Sixty per cent. in cash and forty per cent. in Common Stock of the United States Steel Corporation at the rate of $132.75 per share on the conditions herein stated. Awards for less than $331.88 and all fractional parts of the stock proportion of awards will be paid in cash.

The payments in cash in accordance with the foregoing will be made forthwith without deduction of Federal Income tax or any State Income taxes. But payments made in cash to all employes participating in the distribution will be reported by their respective employing companies to the United States Internal Revenue Department and to States, as may be required by laws, as a part of the compensation for services paid such employes during the year 1926. In case the employing companies are required to withhold any tax from these payments, the employes receiving the same will be notified by their respective companies that they will be obliged to pay to such companies any amounts of tax which may be required to be withheld and paid in connection with such distributions.

The distribution of interest in Common Stock will be made in the form of non-assignable Certificates of Conditional Interest providing for the distribution of shares of Common Stock under and upon certain conditions set forth in said certificates, which will provide, among other things, as follows:

First. That if the participant remains continually in the service of the Corporation or of one or another of its subsidiary companies until January 1, 1931, and shall during all of such time have rendered faithful and satisfactory service to such Corporation or to one or another of its subsidiary companies, then, as soon after January 1, 1931, as may be, and upon surrender of such certificate, there will be delivered to him as his property, the shares of stock referred to in the certificates issued to him as aforesaid.

Second. That until the delivery of such shares and while the employe remains in the service of the Corporation or of one of its subsidiary companies, he shall receive the dividends, if any, declared upon the shares of stock referred to in such certificate.

Third. That if before January 1, 1931, the employe shall voluntarily quit the service of the Corporation or of a subsidiary company, or shall be discharged or removed for cause by his employer, then, in either case, he shall thereby lose all interest in the said certificate and in the shares of stock referred to therein; and thereupon such shares of stock shall be held in a fund, which at the end of the period above named will be divided pro rata among such officers and employes as shall then be entitled to the delivery of the shares of stock referred to in the Certificates of Conditional Interest held by them respectively; provided, however, that retirement under any general pension scheme at the time in effect shall not of itself cause such loss of interest.

Fourth. That if before January 1, 1931, the employe dies or becomes totally and permanently disabled while in the employ of the Corporation or of one or another of its subsidiary companies, or retires under any general pension scheme then in effect, the shares of stock referred to in the certificate issued to him shall be delivered to his estate (or to him, if so disabled or retired), together with a pro rata amount of the fund, if any, which has accrued up to the time of his death, disability, or retirement, by reason of any loss of interest as specified in the preceding paragraph.

Fifth. That all questions relating to the interests, rights, and claims of any officer or employe in, or growing out of, the proposed distributions and fund above specified shall be finally determined and disposed of in its discretion by the Committee of Stockholders of the United States Steel Corporation, elected from time to time to administer the Profit Sharing Plan, as said Committee may be constituted when and as any questions arise.

By order of the Committee of Stockholders referred to in the foregoing.

UNITED STATES STEEL CORPORATION,
GEO. K. LEET, *Secretary.*

UNITED STATES STEEL CORPORATION,
New York, February 8, 1927.

To the Officers and Employees of the United States Steel Corporation and of its Subsidiary Companies:

In accordance with and under the provisions of the Profit Sharing Plan adopted by the stockholders on April 18, 1921, the Board of Directors of United States Steel Corporation has set aside from the net profits for the calendar year 1926, as ascertained and declared by the Board, the Fund for the year 1926 under such Profit Sharing Plan at the rate fixed therein.

As provided and authorized by the Plan, the Committee elected by the stockholders to administer the same has designated the employes of the Corporation and its subsidiary companies qualifying for participation in the Fund and has allotted the amount of the Fund to such designated employes in the manner provided by the Plan.

The Committee has decided that the allotment to the respective participating employes shall be distributed to them as follows: Sixty percent in cash and forty percent in Common Stock of the United States Steel Corporation at the rate of $154.00 per share on the conditions herein stated. Awards for less than $385.00 and all fractional parts of the stock proportion of awards will be paid in cash.

The payments in cash in accordance with the foregoing will be made forthwith without deduction of Federal Income tax or any State Income taxes. But payments made in cash to all employes participating in the distribution will be reported by their respective employing companies to the United States Internal Revenue Department and to States, as may be required by laws, as a part of the compensation for services paid such employes during the year 1927. In case the employing companies are required to withhold any tax from these payments, the employes receiving the same will be notified by their respective companies that they will be obliged to pay to such companies any amounts of tax which may be required to be withheld and paid in connection with such distributions.

The distribution of interest in Common Stock will be made in the form of non-assignable Certificates of Conditional Interest providing for the distribution of shares of Common Stock under and upon certain conditions set forth in said certificates, which will provide, among other things, as follows:

First. That if the participant remains continually in the service of the Corporation or of one or another of its subsidiary companies until January 1, 1932, and shall during all of such time have rendered faithful and satisfactory service to such Corporation or to one or another of its subsidiary companies, then, as soon after January 1, 1932 as may be, and upon surrender of such certificate, there will be delivered to him as his property, the shares of stock referred to in the certificates issued to him as aforesaid.

Second. That until the delivery of such shares and while the employe remains in the service of the Corporation or of one of its subsidiary companies, he shall receive the dividends, if any, declared upon the shares of stock referred to in such certificate.

Third. That if before January 1, 1932, the employe shall voluntarily quit the service of the Corporation or of a subsidiary company, or shall be discharged or removed for cause by his employer, then, in either case, he shall thereby lose all interest in the said certificate and in the shares of stock referred to therein; and thereupon such shares of stock shall be held in a fund, which at the end of the period above named will be divided pro rata among such officers and employes as shall then be entitled to the delivery of the shares of stock referred to in the Certificates of Conditional Interest held by them respectively; provided, however, that retirement under any general pension scheme at the time in effect shall not of itself cause such loss of interest.

Fourth. That if before January 1, 1932, the employe dies or becomes totally and permanently disabled while in the employ of the Corporation or of one or another of its subsidiary companies, or retires under any general pension scheme then in effect, the shares of stock referred to in the certificate issued to him shall be delivered to his estate (or to him, if so disabled or retired), together with a pro rata amount of the fund, if any, which has accrued up to the time of his death, disability, or retirement, by reason of any loss of interest as specified in the preceding paragraph.

Fifth. That all questions relating to the interests, rights, and claims of any officer or employe in, or growing out of, the proposed distributions and fund above specified shall be finally determined and disposed of in its discretion by the Committee of Stockholders of the United States Steel Corporation, elected from time to time to administer the Profit Sharing Plan, as said Committee may be constituted when and as any questions arise.

By order of the Committee of Stockholders referred to in the foregoing.

UNITED STATES STEEL CORPORATION,
GEO. K. LEET, *Secretary.*

UNITED STATES STEEL CORPORATION.
New York, February 14, 1928.

To the Officers and Employes of the United States Steel Corporation and of its Subsidiary Companies:

In accordance with and under the provisions of the Profit Sharing Plan adopted by the stockholders on April 18, 1921, the Board of Directors of United States Steel Corporation has set aside from the net profits for the calendar year 1927, as ascertained and declared by the Board, the Fund for the year 1927 under such Profit Sharing Plan at the rate fixed therein.

As provided and authorized by the Plan, the Committee elected by the stockholders to administer the same has designated the employes of the Corporation and its subsidiary companies qualifying for participation in the Fund and has allotted the amount of the Fund to such designated employes in the manner provided by the Plan.

The Committee has decided that the allotment to the respective participating employes shall be distributed to them as follows: Sixty per cent in cash and forty per cent in Common Stock of the United States Steel Corporation at the rate of $146.25 per share on the conditions herein stated. Awards for less than $366.00 and all fractional parts of the stock proportion of awards will be paid in cash.

The payments in cash in accordance with the foregoing will be made forthwith without deduction of Federal income tax or any State income taxes. But payments made in cash, to all employes participating in the distribution will be reported by their respective employing companies to the United States Internal Revenue Department and to States, as may be required by laws, as a part of the compensation for services paid such employes during the year 1928. In case the employing companies are required to withhold any tax from these payments, the employes receiving the same will be notified by their respective companies that they will be obliged to pay to such companies any amounts of tax which may be required to be withheld and paid in connection with such distributions.

The distribution of interest in Common Stock will be made in the form of non-assignable Certificates of Conditional Interest providing for the distribution of shares of Common Stock under and upon certain conditions set forth in said certificates, which will provide, among other things, as follows:

First. That if the participant remains continuously in the service of the Corporation or of one or another of its subsidiary companies until January 1, 1933, and shall during all of such time have rendered faithful and satisfactory service to such Corporation or to one or another of its subsidiary companies, then, as soon after January 1, 1933, as may be practicable, and upon surrender of such certificate, there will be delivered to him as his property, the shares of stock referred to in the certificate issued to him as aforesaid.

Second. That until the delivery of such shares and while the employe remains in the service of the Corporation or of one of its subsidiary companies, he shall receive the dividends, if any, declared upon the shares of stock referred to in such certificate.

Third. That if before January 1, 1933, the employe shall voluntarily quit the service of the Corporation or of a subsidiary company, or shall be discharged or removed for cause by his employer, then, in either case, he shall thereby forfeit and lose all interest in the said certificate and in the shares of stock referred to therein;

and thereupon such shares of stock shall be held in a fund, which at the end of the period above named will be divided pro rata among such employes as shall then be entitled to the delivery of the shares of stock referred to in the Certificates of Conditional Interest held by them respectively; provided, however, that retirement under any general pension plan at the time in effect shall not of itself cause such forfeiture of interest.

Fourth. That if before January 1, 1933, the employe dies or becomes totally and permanently disabled while in the employ of the Corporation or of one or another of its subsidiary companies, or retires under any general pension plan then in effect, the shares of stock referred to in the certificate issued to him shall be delivered to his estate (or to him, if so disabled or retired), together with a pro rata share of the fund, if any, referred to in the last preceding paragraph, as such fund is constituted at the time of his death, disability or retirement.

Fifth. That all questions relating to the interests, rights and claims of any employe in, or growing out of, the proposed distributions and fund above specified shall be finally and conclusively determined in its discretion by the Committee of Stockholders of the United States Steel Corporation, elected from time to time to administer the Profit Sharing Plan, as said Committee may be constituted at the time such questions arise.

By order of the Committee of Stockholders referred to in the foregoing.

UNITED STATES STEEL CORPORATION.
GEO. K. LEET, *Secretary.*

PROFIT SHARING COMMITTEE OF THE UNITED STATES STEEL CORPORATION.

71 Broadway, New York, February 5, 1929:

To the Officers and Employes of the United States Steel Corporation and of its Subsidiary Companies:

In accordance with and under the provisions of the Profit Sharing Plan adopted by the stockholders on April 18, 1921, the Board of Directors of United States Steel Corporation has set aside from the net profits for the calendar year 1928, as ascertained and declared by the Board, the Fund for the year 1928 under such Profit Sharing Plan at the rate fixed therein.

As provided and authorized by the Plan, the Committee elected by the stockholders to administer the same has designated the employes of the Corporation and its subsidiary companies qualifying for participation in the Fund and has allotted the amount of the Fund to such designated employes in the manner provided by the Plan.

The Committee has decided that the allotment to the respective participating employes shall be distributed to them as follows: Sixty per cent in cash and forty per cent in Common Stock of the

United States Steel Corporation at the rate of $184 per share on the conditions herein stated. Awards for less than $460 and all fractional parts of the stock proportion of awards will be paid in cash.

The payments in cash in accordance with the foregoing will be made forthwith without deduction of Federal income tax or any State income taxes. But payments made in cash to all employes participating in the distribution will be reported by the Profit Sharing Committee to the United States Internal Revenue Department and to States, as may be required by laws, as a part of the compensation for services paid such employes during the year 1929. In case the committee is required to withhold any tax from these payments, the employes receiving the same will be notified by their respective companies that they will be obliged to pay to such companies for transmittal to the committee any amounts of tax which may be required to be withheld and paid in connection with such distributions.

The distribution of interest in Common Stock will be made in the form of non-assignable Certificates of Conditional Interest providing for the distribution of shares of Common Stock under and upon certain conditions set forth in said certificates, which will provide, among other things, as follows:

First. That if the participant remains continuously in the service of the Corporation or of one or another of its subsidiary companies until January 1, 1934, and shall during all of such time have rendered faithful and satisfactory service to such Corporation or to one or another of its subsidiary companies, then, as soon after January 1, 1934, as may be practicable, and upon surrender of such certificate, there will be delivered to him as his property, the shares of stock referred to in the certificate issued to him as aforesaid.

Second. That until the delivery of such shares and while the employe remains in the service of the Corporation or of one of its subsidiary companies, he shall receive the dividends, if any, declared upon the shares of stock referred to in such certificate.

Third. That if before January 1, 1934, the employe shall voluntarily quit the service of the Corporation or of any of its subsidiaries, or shall be discharged or removed for cause by his employer, then, in either such case, he shall thereby forfeit and lose all interest in the said certificate and in the shares of stock referred to therein; and thereupon such shares of stock shall be held in a fund, which at the end of the period above named will be divided pro rata among such employes of the Corporation and its subsidiaries as shall then be entitled to the delivery of the shares of stock referred to in the Certificates of Conditional Interest issued to and held by them respectively; provided, however, that retirement under any general pension plan of the Corporation or its subsidiaries at the time in effect shall not of itself cause such forfeiture of interest.

Fourth. That if before January 1, 1934, the employe dies or becomes totally and permanently disabled while in the employ of the Corporation or of one of its subsidiaries, or retires under any general pension plan then in effect, the shares of stock referred to in the Certificate issued to him shall be delivered to his estate, or to him if so disabled or retired, together with a pro rata share of the fund, if any, referred to in the last preceding paragraph, as such fund is constituted at the time of his death, disability, or retirement.

Fifth. That all questions relating to the interests, rights, or claims of any employe in, or growing out of, the proposed distributions and fund above specified shall be finally and conclusively determined in its discretion by the Profit Sharing Committee of the United States Steel Corporation, as said Committee may be constituted at the time such questions arise, and as provided in said Profit Sharing Plan.

J. PIERPONT MORGAN,
PERCIVAL ROBERTS, JR.,
NATHAN L. MILLER,
Profit Sharing Committee of the United States Steel Corporation.

PROFIT SHARING COMMITTEE OF THE
UNITED STATES STEEL CORPORATION,
71 Broadway, New York, February 4, 1930.

To the Officers and Employes of the United States Steel Corporation and of its Subsidiary Companies:

In accordance with and under the provisions of the Profit Sharing Plan adopted by the stockholders on April 18, 1921, the Board of Directors of United States Steel Corporation has set aside from the net profits for the calendar year 1929, as ascertained and declared by the Board, the Fund for the year 1929 under such Profit Sharing Plan at the rate fixed therein.

As provided and authorized by the Plan, the Committee elected by the stockholders to administer the same has designated the employes of the Corporation and its subsidiary companies qualifying for participation in the Fund and has allotted the amount of the Fund to such designated employes in the manner provided by the Plan.

The Committee has decided that the allotment to the respective participating employes shall be distributed to them as follows: Sixty percent in cash and forty percent in Common Stock of the United States Steel Corporation at the rate of $177 per share on the conditions herein stated. Awards for less than $443 and all fractional parts of the stock proportion of awards will be paid in cash.

The payments in cash in accordance with the foregoing will be made forthwith without deduction of Federal income tax or any State income taxes. But payments made in cash to all employes participating in the distribution will be reported by the Profit Sharing Committee to the United States Internal Revenue Department

and to States, as may be required by laws, as a part of the compensation for services paid such employes during the year 1930. In case the committee is required to withhold any tax from these payments, the employes receiving the same will be notified by their respective companies that they will be obliged to pay to such companies for transmittal to the committee any amounts of tax which may be required to be withheld and paid in connection with such distributions.

The distribution of interest in Common Stock will be made in the form of non-assignable Certificates of Conditional Interest providing for the distribution of shares of Common Stock under and upon certain conditions set forth in said certificates, which will provide, among other things, as follows:

First. That if the participant remains continuously in the service of the Corporation or of one or another of its subsidiary companies until January 1, 1935, and shall during all of such time have rendered faithful and satisfactory service to such Corporation or to one or another of its subsidiary companies, then, as soon after January 1, 1935, as may be practicable, and upon surrender of such certificate, there will be delivered to him as his property, the shares of stock referred to in the certificate issued to him as aforesaid.

Second. That until the delivery of such shares and while the employe remains in the service of the Corporation or of one of its subsidiary companies, he shall receive the dividends, if any, declared upon the shares of stock referred to in such certificate.

Third. That if before January 1, 1935, the employe shall voluntarily quit the service of the Corporation or of any of its subsidiaries, or shall be discharged or removed for cause by his employer, then, in either such case, he shall thereby forfeit and lose all interest in the said certificate and in the shares of stock referred to therein; and thereupon such shares of stock shall be held in a fund, which at the end of the period above named will be divided pro rata among such employes of the Corporation and its subsidiaries as shall then be entitled to the delivery of the shares of stock referred to in the Certificates of Conditional Interest issued to and held by them respectively; provided, however, that retirement under any general pension plan of the Corporation or its subsidiaries at the time in effect shall not of itself cause such forfeiture of interest.

Fourth. That if before January 1, 1935, the employe dies or becomes totally and permanently disabled while in the employ of the Corporation or of one of its subsidiaries, or retires under any general pension plan them in effect, the shares of stock referred to in the Certificate issued to him shall be delivered to his estate, or to him if so disabled or retired, together with a pro rata share of the fund, if any, referred to in the last preceding paragraph, as such fund is constituted at the time of his death, disability or retirement.

Fifth. That all questions relating to the interests, rights or claims of any employe in, or growing out of, the proposed distributions and

fund above specified shall be finally and conclusively determined in its discretion by the Profit Sharing Committee of the United States Steel Corporation, as said Committee may be constituted at the time such questions arise, and as provided in said Profit Sharing Plan.

J. P. MORGAN,
PERCIVAL ROBERTS, JR.,
NATHAN L. MILLER,
Profit Sharing Committee of the United States Steel Corporation.

PROFIT SHARING COMMITTEE OF THE
UNITED STATES STEEL CORPORATION.
71 Broadway, New York, February 3, 1931.

To the Officers and Employes of the United States Steel Corporation and of its Subsidiary Companies:

In accordance with and under the provisions of the Profit Sharing Plan adopted by the stockholders on April 18, 1921, the Board of Directors of the United States Steel Corporation has set aside from the net profits for the calendar year 1930, as ascertained and declared by the Board, the Fund for the year 1930 under such Profit Sharing Plan at the rate fixed therein.

As provided and authorized by the Plan, the Committee elected by the stockholders to administer the same has designated the employes of the Corporation and its subsidiary companies qualifying for participation in the Fund and has allotted the amount of the Fund to such designated employes in the manner provided by the Plan.

The Committee has decided that the allotment to the respective participating employes shall be distributed to them as follows: Sixty per cent in cash and forty per cent in Common Stock of the United States Steel Corporation at the rate of $142 per share on the conditions herein stated. Awards for less than $355 and all fractional parts of the stock proportion of awards will be paid in cash.

The payments in cash in accordance with the foregoing will be made forthwith without deduction of Federal income tax or any State income taxes. But payments made in cash to all employes participating in the distribution will be reported by the Profit Sharing Committee to the United States Internal Revenue Department and to States, as may be required by laws, as a part of the compensation for services paid such employes during the year 1931. In case the Committee is required to withhold any tax from these payments, the employes receiving the same will be notified by their respective companies that they will be obliged to pay to such companies for transmittal to the Committee any amounts of tax which may be required to be withheld and paid in connection with such distributions.

The distribution of interest in Common Stock will be made in the form of non-assignable Certificates of Conditional Interest provid-

ing for the distribution of shares of Common Stock under and upon certain conditions set forth in said certificates, which will provide, among other things, as follows:

First. That if the participant remains continuously in the service of the Corporation or of one or another of its subsidiary companies until January 1, 1936, and shall during all of such time have rendered faithful and satisfactory service to such Corporation or to one or another of its subsidiary companies, then, as soon after January 1, 1936, as may be practicable, and upon surrender of such certificate, there will be delivered to him as his property, the shares of stock referred to in the certificate issued to him as aforesaid.

Second. That until the delivery of such shares and while the employe remains in the service of the Corporation or of one of its subsidiary companies, he shall receive the dividends, if any, declared upon the shares of stock referred to in such certificate.

Third. That if before January 1, 1936, the employe shall voluntarily quit the service of the Corporation or of any of its subsidiaries, or shall be discharged or removed for cause by his employer, then, in either such case, he shall thereby forfeit and lose all interest in the said certificate and in the shares of stock referred to therein; and thereupon such shares of stock shall be held in a fund, which at the end of the period above named will be divided pro rata among such employes of the Corporation and its subsidiaries as shall then be entitled to the delivery of the shares of stock referred to in the Certificates of Conditional Interest issued to and held by them respectively; provided, however, that retirement under any general pension plan of the Corporation or its subsidiaries at the time in effect shall not of itself cause such forfeiture of interest.

Fourth. That if before January 1, 1936, the employe dies or becomes totally and permanently disabled while in the employ of the Corporation or of one of its subsidiaries, or retires under any general pension plan then in effect, the shares of stock referred to in the Certificate issued to him shall be delivered to his estate, or to him if so disabled or retired, together with a pro rata share of the fund, if any, referred to in the last preceding paragraph, as such fund is constituted at the time of his death, disability or retirement.

Fifth. That all questions relating to the interests, rights or claims of any employe in, or growing out of, the proposed distributions and fund above specified shall be finally and conclusively determined in its discretion by the Profit Sharing Committee of the United States Steel Corporation, as said Committee may be constituted at the time such questions arise, and as provided in said Profit Sharing Plan.

J. P. MORGAN,
PERCIVAL ROBERTS, JR.,
NATHAN L. MILLER.
Profit Sharing Committee of the United States Steel Corporation.

223 *Government Exhibit M*

[File endorsement omitted.]
[Title omitted.]

Documents called for by SUBPOENA DUCES TECUM to George K. Leet, Secretary, United States Steel Corporation

1. Annual reports to stockholders for the year 1905, 1910, 1928, 1929, 1930, 1931, and 1932.

2. Letter of advice in pamphlet form to subsidiary companies concerning appropriations for construction, improvements, etc., dated December 1907, and all supplements thereto and reissues thereof.

3. Circular—Form 32C, issued to officers and employes of the United States Steel Corporation and of its subsidiary companies, by George K. Leet, Secretary, United States Steel Corporation, on February 2, 1924, February 3, 1925, February 9, 1926, February 8, 1927, and all succeeding issues thereof.

4. By-laws of the United States Steel Corporation, and all amendments thereto.

5. Circular dated November 11, 1901, addressed to subsidiaries of the United States Steel Corporation, instructing said subsidiaries to set up "United States Steel Corporation Clearance Account" (United States Steel general file).

6. United States Steel Corporation inter-company price list issued quarterly for the years 1929, 1930, 1931, 1932, and 1933.

United States Steel Corporation

By-Laws

December 18, 1933

By-Laws of United States Steel Corporation, as on December 18, 1933

Article I. Stockholders

SECTION 1. Annual Meeting: The annual meeting of the stockholders of the Company shall be held annually at the principal office of the Company in the State of New Jersey, or at such other place in the same municipality in which its said principal office may be located, as may from time to time be designated by its Board of Directors (Date of Meeting), at twelve o'clock noon, on the first Monday in April in each year, if not a legal holiday, and if a legal holiday, then on the next succeeding Monday not a legal holiday, for the purpose of electing directors, and for the transaction of such other business as may be brought before the meeting; and the terms of office of the directors of the several classes shall continue until the election of their successors at such meeting as provided in Article II hereof.

Advertising Notice of Meeting: It shall be the duty of the Secretary to cause notice of each annual meeting to be published once in each of the four calendar weeks next preceding the meeting in at least one newspaper in each of the following places: Jersey City, N. J., New York, N. Y., Chicago, Ill., and Pittsburgh, Pa. Nevertheless, a failure to publish such notice, or any irregularity in such notice, or in the publication thereof, shall not affect the validity of any annual meeting, or of any proceedings at any such meeting.

SECTION 2. Special Meetings: Special meetings of the stockholders may be held at the principal office of the Company in the State of New Jersey, or at such other place in the same municipality in which its said principal office may be located, as may from time to time be designated by its Board of Directors, whenever called in writing, or by vote, by a majority of the Board of Directors.

Advertising Notice of Meetings: Notice of each special meeting, indicating briefly the object or objects thereof, shall by the Secretary be published once in each of the four calendar weeks next preceding the meeting, in at least one newspaper in each of the following places: Jersey City, N. J., New York, N. Y., Chicago, Ill., and Pittsburgh, Pa. Nevertheless, if all the stockholders shall waive notice of a special meeting, no notice of such meeting shall be required; and whenever all the stockholders shall meet in person or by proxy, such meeting shall be valid for all purposes without call or notice, and at such meeting any corporate action may be taken.

SECTION 3. Quorum: At any meeting of the stockholders the holders of one-third of all of the shares of the capital stock of the Company, present in person or represented by proxy, shall constitute a quorum of the stockholders for all purposes, unless the representation of a larger number shall be required by law, and, in that case, the representation of the number so required, shall constitute a quorum.

If the holders of the amount of stock necessary to constitute a quorum shall fail to attend in person or by proxy at the time and place fixed by these by-laws for an annual meeting, or fixed by notice as above provided for a special meeting called by the directors, a majority in interest of the stockholders present in person or by proxy may adjourn, from time to time, without notice other than by announcement at the meeting, until holders of the amount of stock requisite to constitute a quorum shall attend. At any such adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted at the meeting as originally notified.

SECTION 4. Organization—Chairman: The Chairman of the Board, and in his absence the Chairman of the Finance Committee, and in the absence of both, the President, shall call meetings of the stockholders to order, and shall act as chairman of such meetings. The Board of Directors or Finance Committee may appoint any stockholder to act as chairman of any meeting in the absence of the Chair-

man of the Board and of the Chairman of the Finance Committee and of the President.

Secretary: The Secretary of the Company shall act as secretary at all meetings of the stockholders; but in the absence of the Secretary at any meeting of the stockholders the presiding officer may appoint any person to act as secretary of the meeting.

SECTION 5. Voting: At each meeting of the stockholders, every stockholder shall be entitled to vote in person, or by proxy appointed by instrument in writing, subscribed by such stockholder or by his duly authorized attorney, and delivered to the inspectors at the meeting: and he shall have one vote for each share of stock standing registered in his name at the date fixed by the Board of Directors pursuant to Section 4 of Article V of these by-laws. The votes for directors, and, upon demand of any stockholder, the votes upon any question before the meeting, shall be by ballot.

List of stockholders: At each meeting of the stockholders, a full, true, and complete list, in alphabetical order, of all of the stockholders entitled to vote at such meeting, and indicating the number of shares held by each, certified by the Secretary or by the Treasurer, shall be furnished. Only the persons in whose names shares of stock stand on the books of the corporation at the date fixed by the Board of Directors pursuant to Section 4 of Article V of these by-laws, as evidenced by the list of stockholders so furnished, shall be entitled to vote in person or by proxy on the shares so standing in their names.

Prior to any meeting, but subsequent to the date fixed by the Board of Directors pursuant to Section 4 of Article V of these by-laws, any proxy may submit his powers of attorney to the Secretary, or to the Treasurer, for examination. The certificate of the Secretary, or of the Treasurer, as to the regularity of such powers of attorney, and as to the number of shares held by the persons who severally and respectively executed such powers of attorney, shall be received as prima facie evidence of the number of shares represented by the holder of such powers of attorney for the purpose of establishing the presence of a quorum at such meeting and of organizing the same, and for all other purposes.

SECTION 6. Inspectors—Inspectors of Election: At each meeting of the stockholders, the polls shall be opened and closed, the proxies and ballots shall be received and be taken in charge, and all questions touching the qualification of voters and the validity of proxies and the acceptance or rejection of votes, shall be decided by three inspectors. Such inspectors shall be appointed by the Board of Directors before or at the meeting, or, if no such appointment shall have been made, then by the presiding officer at the meeting. If for any reason any of the inspectors previously appointed shall fail to attend or refuse or be unable to serve, inspectors in place of any so failing to attend or refusing or unable to attend, shall be appointed in like manner.

Article II. Board of Directors

SECTION 1. Directors—Number, Classification, and Term of Office: The business and the property of the Company shall be managed and controlled by the Board of Directors.

Classification: As provided in the certificate of incorporation, the directors shall be classified in respect of the time for which they shall severally hold office, by dividing them into three classes, each class consisting of one-third of the whole number of the Board of Directors.

Terms of each Class: The directors of the first class shall be elected for a term of one year; the directors of the second class shall be elected for a term of two years, and the directors of the third class shall be elected for a term of three years. At each annual election, the successors to the directors of the class whose term shall expire in that year, shall be elected to hold office for the term of three years, so that the term of office of one class of directors shall expire in each year.

Number of Directors: The number of directors shall be fifteen; but the number of directors may be altered from time to time by the alteration of these by-laws.

In case of any increase of the number of directors, the additional directors shall be elected by the directors then in office; one-third of such additional directors for the unexpired portion of the term of one year; one-third for the unexpired portion of the term of two years, and one-third for the unexpired portion of the term of three years, so that each class of directors shall be increased equally.

Directors must be Stockholders: Every director shall be a holder of at least one share of the capital stock of the Company. Each director shall serve for the term for which he shall have been elected, and until his successor shall have been duly chosen.

Polls open one hour: At all elections of the directors, the polls shall remain open for at least one hour, unless every registered owner of shares has sooner voted in person or by proxy, or in writing has waived the statutory provision.

SECTION 2. Vacancies—Vacancies in Board: In case of any vacancy in the directors of any class through death, resignation, disqualification or other cause, the remaining directors, by affirmative vote of the majority thereof, may elect a successor to hold office for the unexpired portion of the term of the director whose place shall be vacant, and until the election of his successor. Such vacancy shall be filled upon and after nominations therefor shall have been made by the Finance Committee.

SECTION 3. Place of Meeting, etc.: The directors may hold their meetings, and may have an office and keep the books of the Company (except as otherwise may be provided for by law) in such place or places in the State of New Jersey or outside of the State of New Jersey, as the Board from time to time may determine.

SECTION 4. Regular Meetings: Regular meetings of the Board of Directors shall be held on the first Tuesday following the annual meeting of the stockholders and monthly on the last Tuesday of each month, if not a legal holiday, and if a legal holiday, then on the next succeeding Tuesday not a legal holiday. No notice shall be required for any such regular meeting of the Board.

SECTION 5. Special Meetings: Special meetings of the Board of Directors shall be held whenever called by direction of the Chairman of the Board, or the chairman of the Finance Committee, or the President, or one-third of the directors for the time being in office.

Notice required: The Secretary shall give notice of each special meeting by mailing the same at least two days before the meeting, or by telegraphing the same at least one day before the meeting, to each director; but such notice may be waived by any director. Unless otherwise indicated in the notice thereof, any and all business may be transacted at a special meeting. At any meeting at which every director shall be present, even though without any notice, any business may be transacted.

SECTION 6. Quorum: Seven directors shall constitute a quorum for the transaction of business; but if at any meeting of the Board there be less than a quorum present, a majority of those present may adjourn the meeting from time to time.

The affirmative vote of at least one-third of all the directors for the time being in office shall be necessary for the passage of any resolution.

SECTION 7. Order of Business: At meetings of the Board of Directors business shall be transacted in such order as, from time to time, the Board may determine by resolution.

Presiding Officer: At all meetings of the Board of Directors, the Chairman of the Board, or in his absence the Chairman of the Finance Committee, or in the absence of both of these officers, the President shall preside.

SECTION 8. Contracts: Inasmuch as the directors of this Company are men of large and diversified business interests, and are likely to be connected with other corporations with which from time to time this Company must have business dealings, no contract or other transaction between this Company and any other corporation shall be affected by the fact that directors of this Company are interested in, or are directors or officers of, such other corporation, if, at the meeting of the Board, or of the committee of this Company, making, authorizing, or confirming such contract or transaction, there shall be present a quorum of directors not so interested; and any director individually may be a party to, or may be interested in, any contract or transaction of this Company (Requiring vote of at least seven disinterested Directors), provided that such contract or transaction shall be approved or be ratified by the affirmative vote of at least seven directors not so interested.

Ratification by Stockholders of Acts or Contracts: The Board of Directors in its discretion may submit any contract or act for approval or ratification at any annual meeting of the stockholders or at any meeting of the stockholders called for the purpose of considering any such act or contract; and any contract or act that shall be approved or be ratified by the vote of the holders of a majority of the capital stock of the Company which is represented in person or by proxy at such meeting (provided that a lawful quorum of stockholders be there represented in person or by proxy) shall be valid and as binding upon the corporation and upon all the stockholders as though it had been approved or ratified by every stockholder of the corporation.

SECTION 9. Compensation of Directors: For his attendance at any meeting of the Board of Directors, or Finance Committee, every director shall receive an allowance of one hundred dollars, for attendance at each meeting.

SECTION 10. Election of Officers and Committees: At the first regular meeting of the Board of Directors in each year (at which a quorum shall be present) held next after the annual meeting, the Board of Directors shall proceed to the election of the executive officers of the Company, and of the Finance Committee to be elected by the Board of Directors under the provisions of Article III and Article IV of the by-laws.

Article III. Finance Committee

SECTION 1. Finance Committee: The Board of Directors shall elect from the directors a Finance Committee, and shall designate for such committee a chairman, who shall continue to be chairman of the committee during the pleasure of the Board of Directors. The Board of Directors may also elect from their number one or more alternate members of the Finance Committee to serve at the meetings of the committee in the absence of any regular member or members, and, in case more than one alternate is elected, shall designate at the time of election the priorities as between them.

Vacancies; how filled: The Board of Directors shall fill vacancies in the Finance Committee by election from the directors; and at all times it shall be the duty of the Board of Directors to keep the membership of such committee full, with due regard to the qualifications for such membership indicated in this Article of the by-laws.

Action of Committee to be reported to Board: All action by the Finance Committee shall be reported to the Board of Directors at its meeting next succeeding such action, and shall be subject to revision or alteration by the Board of Directors; provided, that no rights or acts of third parties shall be affected by any such revision or alteration.

Rules of Procedure: The Finance Committee shall fix its own rules of procedure, and shall meet where and as provided by such

rules, or by resolution of the Board of Directors, but in every case the presence of a majority of the members shall be necessary to constitute a quorum.

In every case the affirmative vote of a majority of all of the members of the committee present at the meeting, shall be necessary to its adoption of any resolution.

SECTION 2. Membership: The Finance Committee shall consist of seven members, besides the Chairman of the Board and the President, who, by virtue of their offices, shall be members of the Finance Committee. So far as practicable each of the seven elected members of the Finance Committee shall be a person of experience in matters of finance. Unless otherwise ordered by the Board of Directors, each elected member of the Finance Committee shall continue to be a member thereof until the expiration of his term of office as a director.

Powers and Duties: The Finance Committee shall have special charge and control of all financial affairs of the Company.

During the intervals between the meetings of the Board of Directors, the Finance Committee shall possess, and may exercise, all the powers of the Board of Directors, in the management of all the affairs of the Company, including its purchases of property, and the execution of legal instruments with or without the corporate seal in such manner as said committee shall deem to be best for the interests of the Company, in all cases in which specific directions shall not have been given by the Board of Directors.

Powers of Chairmen: During the intervals between the meetings of the Finance Committee and subject to its review, the Chairman of the Board, and in his absence the Chairman of the Finance Committee, shall possess and may exercise any of the powers of the committee, except as from time to time shall be otherwise provided by resolution of the Board of Directors.

Powers of Vice Chairman: The Vice Chairman of the Finance Committee shall assist the Chairman of the Finance Committee in the performance of his duties and shall have such powers and perform such other duties as may be assigned to him by the Board of Directors, the Finance Committee, the Chairman of the Board, or the Chairman of the Finance Committee.

Salaries fixed by Finance Committee: Except as otherwise provided by the by-laws, or by resolution of the Board of Directors, all salaries and compensations paid or payable by the Company shall be fixed by the Finance Committee.

No director not an executive officer shall become a salaried employee of the Company except by special vote of the Finance Committee.

Article IV. Officers

SECTION 1. Officers—Titles: The executive officers of the corporation shall be a Chairman of the Board of Directors, a Chairman of the Finance Committee, a Vice Chairman of the Finance Committee,

a President, a General Counsel, a Treasurer, a Secretary, and a Comptroller, all of whom shall be elected by the Board of Directors.

Other Officers: The Board of Directors may appoint such other officers as they shall deem necessary, who shall have such authority and shall perform such duties as from time to time may be prescribed by the Board of Directors.

One person may hold more than one office.

In its discretion, the Board of Directors by the vote of a majority thereof may leave unfilled for any such period as it may fix by resolution, any office except those of President, Treasurer, Secretary, and Comptroller.

Term of Office: All officers and agents shall be subject to removal at any time by the affirmative vote of a majority of the whole Board of Directors. All officers, agents, and employees, other than officers appointed by the Board of Directors, shall hold office at the discretion of the committee or of the officer appointing them.

Each of the salaried officers of the corporation shall devote his entire time, skill, and energy to the business of the corporation, unless the contrary is expressly consented to by the Board of Directors or the Finance Committee. No vacation shall be taken by any of such officers except by consent of the Board of Directors or the Finance Committee.

Removal: The Finance Committee shall have power to remove all officers, agents, and employees of the Company, except officers elected or appointed by the Board of Directors.

SECTION 2. Powers and Duties of the Chairman of the Board: The Chairman of the Board of Directors shall be the chief executive officer of the corporation and, subject to the Board of Directors and Finance Committee, shall be in general charge of the affairs of the corporation. He shall preside at all meetings of the stockholders and of the Board of Directors; and by virtue of his office shall be a member of the Finance Committee.

SECTION 3. Powers and Duties of the President: In the absence of the Chairman of the Board and the Chairman of the Finance Committee, the President shall preside at all meetings of the stockholders and of the Board of Directors. Subject to the Board of Directors and the Finance Committee, he shall have general charge of the business of the corporation relating to manufacturing, mining, and transportation and general operation. He shall keep the Board of Directors and the Finance Committee and the Chairman of the Board and the Chairman of the Finance Committee fully informed, and shall freely consult them concerning the business of the corporation in his charge. He may sign and execute all authorized bonds, contracts, checks, or other obligations in the name of the corporation, and with the Treasurer or an Assistant Treasurer may sign all certificates of the shares in the capital stock of the corporation. He shall do and perform such other duties as from time to time may be assigned to him by the Board of Directors.

SECTION 4. Vice-Presidents: The Board of Directors may appoint a vice-president or more than one vice-president. Each vice-president shall have such powers, and shall perform such duties, as may be assigned to him by the Board of Directors or the Finance Committee.

SECTION 5. The General Counsel: The General Counsel shall be the chief consulting officer of the Company in all legal matters, and subject to the Board of Directors and the Finance Committee, shall have general control of all matters of legal import concerning the Company.

SECTION 6. Powers and Duties of Treasurer: The Treasurer shall have custody of all the funds and securities of the Company which may have come into his hands; when necessary or proper he shall endorse on behalf of the Company, for collection, checks, notes, and other obligations, and shall deposit the same to the credit of the Company in such bank or banks or depositary as the Board of Directors or the Finance Committee may designate; he shall sign all receipts and vouchers for payments made to the Company; jointly with such other officer as may be designated by the Finance Committee, he shall sign all checks made by the Company, and shall pay out and dispose of the same under the direction of the Board or of the Finance Committee; he shall sign with the President, or such other person or persons as may be designated for the purpose by the Board of Directors or the Finance Committee, all bills of exchange and promissory notes of the Company; he may sign, with the President or a Vice-President, all certificates of shares in the capital stock; whenever required by the Board of Directors or by the Finance Committee, he shall render a statement of his cash account; he shall enter regularly, in books of the Company to be kept by him for the purpose, full and accurate account of all moneys received and paid by him on account of the Company; he shall, at all reasonable times, exhibit his books and accounts to any director of the Company upon application at the office of the Company during business hours; and he shall perform all acts incident to the position of treasurer, subject to the control of the Board of Directors or of the Finance Committee.

He shall give a bond for the faithful discharge of his duties in such sum as the Board of Directors or the Finance Committee may require.

SECTION 7. Assistant Treasurers: The Board of Directors or the Finance Committee may appoint an assistant treasurer or more than one assistant treasurer. Each assistant treasurer shall have such powers and shall perform such duties as may be assigned to him by the Board of Directors, or by the Finance Committee.

SECTION 8. Powers and Duties of Secretary: The Secretary shall keep the minutes of all meetings of the Board of Directors, and the minutes of all meetings of the stockholders, and also (unless otherwise directed by the Finance Committee) the minutes of all commit-

tees, in books provided for that purpose; he shall attend to the giving and serving of all notices of the Company; he may sign with the President in the name of the Company all contracts authorized by the Board of Directors or by the Finance Committee, and, when so ordered by the Board of Directors or the Finance Committee, he shall affix the seal of the Company thereto; he shall have charge of the certificate books, transfer books and stock ledgers, and such other books and papers as the Board of Directors or the Finance Committee may direct, all of which shall, at all reasonable times, be open to the examination of any director, upon application at the office of the Company during business hours; and he shall in general perform all the duties incident to the office of secretary, subject to the control of the Board of Directors and of the Finance Committee. The offices of Secretary and of Treasurer may be held by one and the same person.

SECTION 9. Assistant Secretaries: The Board of Directors or the Finance Committee may appoint one assistant secretary or more than one assistant secretary. Each assistant secretary shall have such powers and shall perform such duties as may be assigned to him by the Board of Directors or by the Finance Committee.

SECTION 10. Comptroller: The Comptroller shall be the principal officer in charge of the accounts of the Company, and shall perform such duties as from time to time may be assigned to him by the Board of Directors or the Finance Committee.

SECTION 11. Voting upon Stocks—Voting upon Stocks owned in other Companies: Unless otherwise ordered by the Board of Directors or by the Finance Committee, the Chairman of the Board or the Chairman of the Finance Committee shall have full power and authority in behalf of the corporation to attend and to act and to vote at any meetings of stockholders of any corporation in which the corporation may hold stock, and at any such meeting shall possess and may exercise any and all the rights and powers incident to the ownership of such stock, and which, as the owner thereof, the corporation might have possessed and exercised if present. The Board of Directors or the Finance Committee, by resolution, from time to time, may confer like powers upon any other person or persons.

Article V. Capital Stock—Seal

SECTION 1. Certificates of Shares: The certificates for shares of the capital stock of the Company shall be in such form, not inconsistent with the certificate of incorporation, as shall be prepared or be approved by the Board of Directors. The certificates shall be signed by the President or a vice-president, and either the Treasurer or an assistant treasurer, or the Secretary or an assistant secretary, but where such certificate is signed by a transfer agent or an assistant transfer agent and a registrar the signatures of any such president,

vice-president, treasurer, assistant treasurer, secretary or assistant secretary may be facsimiles.

All certificates shall be consecutively numbered. The name of the person owning the shares represented thereby, with the number of such shares and the date of issue, shall be entered on the Company's books.

No certificate shall be valid unless it is signed by the President or a vice-president, and either the Treasurer or an assistant treasurer, or the Secretary or an assistant secretary, but where such certificate is signed by a tansfer agent or an assistant transfer agent and a registrar the signatures of any such president, vice-president, treasurer, assistant treasurer, secretary or assistant secretary may be facsimiles.

All certificates surrendered to the Company shall be canceled, and no new certificate shall be issued until the former certificate for the same number of shares of the same class shall have been surrendered and canceled.

SECTION 2. Transfer of Shares: Shares in the capital stock of the Company shall be transferred only on the books of the Company by the holder thereof in person, or by his attorney, upon surrender and cancellation of certificates for a like number of shares.

SECTION 3. Regulations: The Board of Directors, and the Finance Committee also, shall have power and authority to make all such rules and regulations as respectively they may deem expedient, concerning the issue, transfer and registration of certificates for shares of the capital stock of the Company.

Transfer Agent; Registrar: The Board of Directors or the Finance Committee may appoint one or more transfer agents or assistant transfer agents and one or more registrars of transfers, and may require all stock certificates to bear the signature of a transfer agent or assistant transfer agent and a registrar of transfers.

SECTION 4. Record Dates.—Fixing date for determination of stockholders' rights: The Board of Directors is authorized from time to time to fix in advance a date, not exceeding thirty days preceding the date of any meeting of stockholders, or the date for the payment of any dividend, or the date for the allotment of rights, or the date when any change or conversion or exchange of capital stock shall go into effect, as a record date for the determination of the stockholders entitled to notice of and to vote at any such meeting, or entitled to receive payment of any such dividend, or any such allotment of rights, or to exercise the rights in respect to any such change, conversion or exchange of capital stock, and in such case only stockholders of record on the date so fixed shall be entitled to such notice of and vote at such meeting, or to receive payment of such dividend, or allotment of rights, or exercise such rights, as the case may be, and notwithstanding any transfer of any stock on the books of the corporation after any such record date fixed as aforesaid.

SECTION 5. Dividends: The Board of Directors may declare dividends from the surplus or from the net profits of the corporation.

Dates for Declaration: The dates for the declaration of dividends upon the preferred stock and for the declaration of regular dividends upon the common stock shall be the days by these by-laws fixed for the regular monthly meetings of the Board of Directors in the months of April, July, October, and January in each year, on which days the Board of Directors in its discretion shall declare what, if any, dividends shall be declared upon the preferred stock and the common stock or either of such stocks; but upon any day by these by-laws fixed for a regular meeting of the Board of Directors in any month or upon any day upon which a special meeting of the Board of Directors shall be held in accordance with the provisions of these by-laws, the directors may declare an extra dividend on the common stock of the corporation out of the surplus or net profits of the corporation existing at the end of the last quarter for which a full dividend upon the preferred stock was declared, provided all cumulative dividends upon the preferred stock for all previous years shall have been declared and shall have become payable, and the accrued quarterly instalments for the current year shall have been declared and the corporation shall have paid such cumulative dividends for previous years and such accrued quarterly instalments, or shall have set aside from its surplus or net profits a sum sufficient for the payment thereof.

Preferred; when payable: The dividends upon the preferred stock, if declared, severally and respectively, shall be payable quarterly upon the day preceding the last day of May, of August, of November, and of February in each year.

Common; when payable: The dividends upon the common stock, if declared upon the days fixed by these by-laws for the declaration of regular dividends upon the common stock, severally and respectively, shall be payable quarterly on the day preceding the last day of June, of September, of December, and of March in each year; and if any extra dividends shall be declared at any other time, they shall be payable upon such date or dates as may be determined by the Board of Directors.

Legal holiday. If the date herein appointed for the payment of any dividends shall in any year fall upon a legal holiday, then the dividends payable upon such date shall be paid upon the next preceding day not a legal holiday.

SECTION 6. Working Capital: The directors shall not be required in January in each year, after reserving over and above its capital stock paid in, as a working capital for said corporation, such sum, if any, as shall have been fixed by the stockholders, to declare a dividend among its stockholders of the whole of its accumulated profits exceeding the amount so reserved, and pay the same to such stockholders on demand; but the Board of Directors may fix a sum which may be set aside or reserved, over and above the Company's capital paid in, as a working capital for the Company, and from time

to time they may increase, diminish, and vary the same in their absolute judgment and discretion.

SECTION 7. Corporate Seal: The Board of Directors shall provide a suitable seal, containing the name of the Company, which seal shall be in charge of the Secretary. If and when so directed by the Board of Directors or by the Finance Committee, a duplicate of the seal may be kept and be used by the Treasurer or by any assistant secretary or assistant treasurer.

Article VI. Amendments

SECTION 1. Amendments: The Board of Directors shall have power to make, amend, and repeal the by-laws of the Company, by vote of a majority of all of the directors, at any regular or special meeting of the Board, *provided* that notice of intention to make, amend, or repeal the by-laws in whole or in part shall have been given at the next preceding meeting; or without any such notice, by a vote of two-thirds of all the directors.

224 *Government Exhibit N*

Inter-Company Price List, Fourth Quarter, 1933

Special Notes

(A) The prices scheduled herein covering items numbered 2 to 20, inclusive, and 30 to 85, inclusive, will in no case apply on shipments to subsidiary companies not members of the Iron and Steel Code. On all shipments to such non-members the established Code Prices will govern.

(B) The prices herein scheduled will not apply on following:

(1) Shipments of Pig Iron, Scrap and Billets to the Pencoyd plant of American Bridge Co. and to the Duluth and Worcester plants of American Steel & Wire Co.

(2) Shipments of Scrap from any plants of the American Bridge Co. to other subsidiaries. Prices to be charged for the foregoing will be arranged for under plan outlined in letter of August 25, 1921, relating to Scrap shipments as above, the same pricing plan having been extended on January 1, 1924, to include Pig Iron and Billets.

(3) Shipments of Scrap from subsidiary railroad companies, iron ore mining companies, steamship companies, dock companies, limestone companies, coal mining and bee-hive coke companies, shipbuilding company, cement company, and commercial warehouses. On all such scrap shipments current trade prices will govern.

(4) Shipments made either to or from plants of the Columbia Steel Company or the Oil Well Supply Co. When necessary, prices for any such shipments will be specially arranged for.

(5) Shipments of Coal to subsidiary railroads. When coal is supplied to railroads from Corporation mines, prices to be charged will

be agreed upon between buyer and seller on basis of competitive prices, allowance being made for quality and cost of delivery.

(C) Owing to prevailing relative market price conditions on certain commodities, special allowances or differentials have been made (from heretofore established spreads) on Items 8, 30 to 85, incl., Coke Products and all Scrap items except 148.

(D) Items 71, 72 and 82 while listed in this schedule, are shown without price, the understanding being that prices for these will be specially arranged to meet the conditions under which shipments are made, all as heretofore directed.

(E) The price of $2.90 for Domestic Coke from By-Product Ovens (Item #107) applies to coke for consumption by the purchasing company. If any of such coke is purchased for resale to employes for their use at prices lower than the Inter-Company price, an equitable price adjustment shall be effected between the selling and the purchasing companies on the tonnage thus resold employes.

(F) Referring to Item 133 covering Low Phosphorus Scraps. The extra of 10% over ordinary Scraps applies only where the Purchaser's requirements demand a low phos scrap. When low phos scrap is interchanged between subsidiaries for use at buyer's plant for ordinary melting purposes where other than low phos scrap would serve equally well, it will be priced as ordinary scrap.

(G) The special Inter-Company Price List for Steel Castings dated March 31, 1931, per item 88 herein, is revised as of October 1, 1933, in the following respects:

(a) All per pound prices given in the 1931 list under groups 1, 2, 6, 7, 8, 9, 10, 11, 12, and 13, are increased by 10%.

(b) All charges for machining, turning, finishing, etc., as covered in the 1931 list under groups 3, 4, and 5 are increased by 10%.

(c) The prices on castings as above revised are f. o. b. delivered, the shipping foundry absorbing the freight.

Schedule of prices to govern exchange of materials between subsidiary companies of United States Steel Corporation

[All materials are per gross ton, f. o. b. shipping point, unless otherwise noted]

Number	Items	Price	Remarks
	Pig Iron		
	(Sand-cast, from cast-house or sand-beds, 2,300 lbs.)		
	(Sand-cast, from stock-pile 2,268 ")		
	(Chill or Machine-cast 2,240 ")		
2	Standard Bessemer .0% to .10 phos.	18.00	Base Price for all commodities except scrap.
4	Special Bessemer .035 or under in phos. and sulphur. For each advance in phosphorus of 0.001 percent over 0.035 percent, reduce the price by 12¢ per ton.	21.60	120% of Base Price.
8	Standard Basic-chill or machine cast, not to exceed .30 phos. (Base price for scrap.)	17.00	93% " " "
10	Foundry No. 1	16.75	93% " " "
12	Foundry No. 2	16.55	92% " " "
14	Grey Forge	16.20	90% " " "
16	Ferro-Manganese, 80% Manganese (78% to 82%). This price to be decreased or increased at rate of $1.00 per unit if Manganese runs less than 78% or over 82%.	85.00	

Schedule of prices to govern exchange of materials, etc.—Continued

[All materials are per gross ton, f. o. b. shipping point, unless otherwise noted]

Number	Items	Price	Remarks
	Pig iron		
18	20% Spiegeleisen (Manganese 18% to 21.99%)	27.00	
19	16% Spiegeleisen (" 14% to 17.99%). Spiegeleisen over 22% will take the $27.00 price per item 18.	25.00	
20	Ferro-Silicon, 10% Silicon	25.00	Add or deduct $1.00 for each variation of 1% in silicon.
25	Fluorspar (Product of Mine)	14.00	Net Ton F. O. B. Mine.
	Bessemer Billets, Blooms, Slabs, Sheet & Tin Bars		
	Note: For billets and sheet bars containing copper additions, extras are added as fixed under authorized advices sent out by the Carnegie Steel Co. For special grades of steel other than those covered by items 30 to 72 add the usual price extras observed by the trade. For billets and sheet bars per items 30 to 72 for conversion into products for export, allowance of $3.00 per ton from the prices here shown will be made.		
30	4" x 4" and larger, up to and including .25 carbon	26.00	
32	4" x 4" and larger, .26 to .60 carbon, inclusive	27.00	
34	4" x 4" and larger, over .60 carbon	28.00	
36	Above prices effective for manganese up to and including .75 minimum or for a specified range up to and including .75 to 1.05. For manganese specified higher, price to be.	28.00	
38	1½" x 1½", etc., and under 4" x 4" or equivalent section; and sheet or tin bars 30 ft. lengths and over 9# per lin. ft., up to and including .25 carbon.	26.00	
40	Same as No. 38, except .25 to .60 carbon, inclusive	27.00	
42	Same as No. 38, except .60 to 1.00 carbon, inclusive	28.00	
44	Items 38, 40, and 42 are subject, as to manganese, to the same range and price extras prescribed per item 36.	28.00	
46	Sheet and Tin Bars, under 30 ft		35¢ advance same grade long bars.
47	Sheet and Tin Bars, 9# and less per lineal foot		85¢ advance same grade heavier bars.
	Open Hearth Billets, Blooms, Slabs, Sheet & Tin Bars		
50	4" x 4" and larger, up to and including .30 carbon	26.00	Same as Bessemer.
52	4" x 4" and larger, .31 to .60 carbon, inclusive	27.00	
54	4" x 4" and larger, over .60 carbon	28.00	
56	Above prices effective for manganese up to and including .75 minimum or for a specified range up to and including .75 to 1.05. For manganese specified higher, price to be.	28.00	
57	Blooms and Billets for Seamless Tube Rounds, unchipped; $2.50 advance over regular price for items 50, 52, 54, and 56.		
58	Seamless Tube Rounds—Chipped; $4.00 advance over price of Seamless Tube Blooms and Billets of same quality, per item 57.		
60	1½" x 1½", etc., and under 4" x 4", or equivalent section, and sheet or tin Bars 30 ft. lengths and over 9# per lin. ft. up to and including .30 carbon.	26.00	
62	Same as No. 60, except .31 to .60 carbon, inclusive	27.00	
64	Same as No. 60, except carbon .61 or over	28.00	
66	Items 60, 62, and 64 are subject, as to manganese, to the same range and price extras prescribed per item 56.	28.00	
68	Sheet or Tin Bars, under 30 ft		35¢ advance same grade long bars.
69	Sheet or Tin Bars 9# or lighter per lineal ft		85¢ advance same grade heavier bars.
70	Railway Axle Blooms	31.00	$5.00 advance over ordinary stock.
71	Forging Blooms and Billets		To be arranged.
72	Special grades Spring Steel, etc		To be arranged.
	Ingots		
80	Bessemer .08 to .10 phos	22.50	Base plus 60% of billet spread.
81	Open Hearth	22.50	
82	Forging Ingots		To be arranged.
	Wire Rods		
85	No. 0 to 5, inclusive, Bessemer or Open Hearth	36.00	4" Bessemer billets plus 85% spread from pig iron to billets.

Schedule of prices to govern exchange of materials, etc.—Continued

[All materials are per gross ton, f. o. b. shipping point, unless otherwise noted]

Number	Items	Price	Remarks
	Ingot Molds & Stools		
87	New Ingot Molds and Stools (Net Ton)	23.50	$5.50 advance over Bessemer pig iron.
	Gross ton pig iron; net ton Molds and Stools.		
88	Steel Castings and Rolls (Increases over Price Schedule dated March 31, 1931, as per note (G) on Sheet 1).		
	Sulphuric Acid		
90	60 degree Sulphuric Acid (In Shipper's Tank Cars)	8.75	Net Ton.
	For Sulphuric Acid shipped in carboys, an extra charge will be made of ½¢ per pound for carload lots, and ¾¢ per pound in less than carload lots.		
	Cement		
	(These prices not to apply on cement sold to Subsidiary Railroad Companies.)		
96	Shipped from any plant of Universal Atlas Cement Company	1.20	Per barrel net exclusive of packages
	Note: If shipped in cloth sacks, add 40¢ per barrel; if in paper bags, 15¢ per barrel. If shipped in bulk, usual allowance to be made.		
	Special Note: Coke or Coal companies will pro-rate to all companies on basis of tons of coal or coke shipped to each, any excess price over inter-company price paid for coal or coke purchased from outside interests.		
	Coke & By-Products		
100	Furnace Coke (From Bee-Hive Ovens)	3.35	Net Ton f. o. b. ovens.
	Note: There will be a reduction of 10¢ per ton from item 100 for furnace coke shipped to subsidiary companies to be placed in stock piles.		
101	Furnace Coke. From all By-Product Coke Plants other than Fairfield, Clairton, and Duluth.	------	100% price of Conn. Bee-Hive coke delivered.
102	Furnace Coke. From Clairton By-Product Ovens	3.45	Net Ton f. o. b. ovens.
	(Billing weight on items 101 and 102 to be adjusted to straight 2½% moisture basis, whether actual moisture runs over or under this figure.)		
103	Foundry Coke	3.60	Net Ton f. o. b. ovens.
104	Crushed Coke	3.60	" " " "
105	Soft Coke (From Bee-Hive Ovens)	2.70	" " " "
106	Soft Coke. From all By-Product coke ovens exclusive of T. C. I. & R. R. Co.	------	100% price of Conn. Bee-Hive soft coke delivered.
107	Domestic Coke (From By-Product Ovens) (Price on carload lots only). See note E, Sheet 1.	2.90	Net Ton f. o. b. ovens.
110	Coke Dust from Bee-Hive ovens only (All other Coke Dust to be priced per list of June 30, 1930).	1.20	Net Ton f. o. b. point of shipment.
112	Tar from By-Product Plants (For Fuel purposes) (Not to contain over 2% moisture; if in excess, usual allowance to be made).	2½¢	Gallon.
114	Benzol for Motor Fuel—In Tank Cars	15¢	Gallon.
115	" " " " —In Drums	16¢	"
	Prices of Coal for Steam, Fuel, and Coking Purposes (F. O. B. Mines)		
120	Connellsville Mines:		
	a. Run-of-Mine	2.10	Net Ton.
	b. Lump (1" to 1½")	2.38	" "
	c. Screenings (1" to 1½")	1.82	" "
122	United States Coal & Coke Co.:		
	a. Run-of-Mine	1.60	Net Ton.
	b. 6" Lump	2.36	" "
	c. 4" "	2.02	" "
	d. 1¾ x 6" Nut	2.01	" "
	e. 4" Screenings	1.53	" "
	f. 1¼" "	1.44	" "
124	National Mining Co.:		
	a. Run-of-Mine	1.50	Net Ton.
	b. 3" Lump	1.68	" "
	c. 1¼" Lump	1.66	" "
	d. ¾" "	1.65	" "
	e. Nut	1.35	" "
	f. Mixed Nut and Slack	1.26	" "
	g. Slack	1.18	" "
	h. Crushed Slack	1.53	" "
	i. Bug Dust	1.10	" "

Schedule of prices to govern exchange of materials, etc.—Continued

[All materials are per gross ton, f. o. b. shipping point, unless otherwise noted]

Number	Items	Price	Remarks
	Prices of Coal for Steam, Fuel, and Coking Purposes (F. O. B. Mines)—Con.		
125	Sharon Mines:		
	a. Run-of-Mine	2.15	Net Ton.
	b. 3" Lump	2.40	" "
	c. ¾" Lump	2.30	" "
	d. ¾" x 3" Nut	2.30	" "
	e. ¾" Screenings	1.81	" "
126	The Lorain Steel Co.—Ingleside Mine (Run-of-Mine)	1.75	" "
127	United States Fuel Co.:		
	a. Run-of-Mine	1.75	Net Ton.
	b. Lump (4" to 6")	2.14	" "
	c. Lump (2½" to 4")	2.04	" "
	d. Lump (1¼" to 2½")	1.95	" "
	e. Nut (2½" by 1¼")	1.93	" "
	f. Screenings (through 2½" screen)	1.58	" "
	g. " " 1¼" "	1.49	" "
	h. " " ¾" "	1.17	" "
	i. Washed Coal	2.28	" "
	Iron & Steel Scrap (except for sales mentioned in paragraph (B) Sheet 1)		
	Base: Inter-Company Price for Standard Basic Pig Iron $17.00, less $6.50, Net $10.50 as the base.		
	NOTE.—All scrap prices per items 130 to 232 inclusive (except item 148), are F. O. B. Delivered at Consumers' Yards, the shipping works assuming the freight.		
	All prices are for scrap charging-box size, except where special provision or notation is made. Where scrap is not charging-box size and has to be sheared or broken and no special provision is made for same, a uniform price of $1.50 per ton is to be allowed the receiving company for such shearing or breaking.		
	When it becomes necessary for any works to ship carloads of mixed scrap, such carloads are to be billed according to contents. If the exact weight of the different grades of scrap cannot be obtained, the same must then be estimated by the shipper. If the receiving company criticizes any estimate thus made, the matter must, of course, be settled as any other claim would be.		
			% of Base:
130	Ingot Butts	11.00	105.
132	Condemned Ingots	11.00	105.
133	Low Phosphorus Scraps: Charge price of ordinary scrap of same grade plus 10%. This extra will only apply where Companies require and specify low phos scrap. (See note F, sheet 1.)		
134	Bloom, Billet, and Slab Crops. (This includes cobbles made on the first pass of rod mill roughing trains, whether three-high or continuous.)	11.00	105.
135	Stainless Steel Scrap: Prices for the respective grades of Stainless Steel Scraps will be fixed quarterly under authorized advices sent out by the Illinois Steel Company. (No change in Price from Third Quarter.)		
136	Rail Ends	11.00	105.
138	Old Rails (broken)	11.00	105.
140	Old Rails (unbroken) 85¢ allowance for shearing	10.15	97
142	Defective Billets	11.00	105.
144	Structural Shape Scrap (Heavy)	11.00	105.
146	Forge Scrap (Heavy)	11.00	105.
147	Eyebar Crops	11.00	105.
148	Condemned Ingot Moulds and Stools (broken)	17.00	100 (70¢ less if required to break).
150	Plate Scrap. (Does not cover any scrap produced by mills of American Sheet & Tin Plate Co., although part of the product of the sheet mills is sold and designated as plate scrap.)	10.50	100.
152	Skelp Scrap. (All skelp except such as is rolled on merchant mills.)	10.50	100.
154	Sheet and Tin Bar Crops	10.50	100.
160	Splice Bar Scrap	10.50	100.
162	Rod Cobbles. (This includes all sheared cobbles from the second pass of rod mill roughing train (three-high or continuous) down to and including the pass making a section approximately half inch square.)	10.50	100.
164	Scrapped "Special" Forgings	10.50	100.
166	Pipe, Tube and Socket Scrap (mashed)	10.50	100.
167	Pipe, Tube and Socket Scrap, 2" and under in diameter (unmashed).	9.95	95.
168	Merchant Mill Scrap	9.95	95.

9933

Schedule of prices to govern exchange of materials, etc.—Continued

[All materials are per gross ton, f. o. b. shipping point, unless otherwise noted]

Number	Items	Price	Remarks
	Iron & Steel Scrap (except for sales mentioned in paragraph (B) sheet 1)—Con.		
170	Spike and Bolt Scrap	9.95	95.
174	Galvanized Pipe Scrap (mashed)	9.95	95.
176	Rolls, Pinions, and Castings (steel)	9.95	95 ($1.75 less if required to break).
178	Rolls, Pinions, and Castings (iron)	9.45	90.
180	Heavy Chilled Ladle Skulls and Salamanders (broken)	9.45	90.
182	Punchings	9.45	90.
184	Hoop and Cotton Tie Scrap	8.90	85.
186	Rod and Wire Scrap	8.90	85.
	Rod scrap cut or bundled.		
	Wire scrap coiled, balled or baled.		
	To include all rod scrap not covered by No. 162.		
188	Black Sheet and Tin Scrap—Bundled	8.90	85.
	Compressed (Baled)	9.90	($1.00 above Bundled.)
190	Pig Iron Scrap (fine)	8.90	85.
192	Casting Machine Scrap	8.90	85.
194	Runner Scrap (furnace)	8.90	85.
196	Pipe Scrap, over 2" in diameter (unmashed)	8.40	80.
198	Light Ladle Scrap and Skulls	8.40	80.
202	Nail Scrap	8.40	80.
204	Nail Whiskers	7.35	70.
206	Miscellaneous cast and wrought scrap. (This includes all miscellaneous cast and wrought scrap that cannot be separated and weighed by shipper.)	7.85	75.
208	Pit scrap (Bessemer and O. H.)	7.35	70.
210	Cinder and Cupola Dump Scrap (average all grades)	7.35	70.
212	Drillings, Turnings, and Borings (steel)	7.35	70.
214	Drillings, Turnings, and Borings (iron)	6.30	60.
216	Burnt Iron	5.25	50.
218	Annealing boxes, galvanized pots, galvanizing pans, stands, tinning pots and pans, etc.	5.25	50.
220	Item No. 218, either riveted, welded, or pressed, subject to an allowance of $2.75 per gross ton for reducing to charging-box size.	2.50	
222	Item No. 218, NOT riveted, welded, or pressed, subject to an allowance of 70¢ per gross ton for reducing to charging-box size.	4.55	
226	Galvanized Sheet Scrap	5.25	50.
228	Old Corrugated Roofing Scrap	3.15	30.
230	Old Boilers—all kinds	4.00	
232	Old Boiler Tubes	5.25	50.
	Cinder, Scale, Flue, Dust, and Miscellaneous		
238	Raw Blast Furnace Flue Dust	1.00	(Dry Weight Basis.)
240	Ordinary Heating-furnace, pit-tap, and flue cinder	2.50	
242	Cinder containing 70% or over metallic iron, made from a horizontal heating furnace, or from a basic lined heating furnace, or from any other heating furnace, provided the silica in the cinder does not exceed 5%.	6.00	
	Note: In order to get cinder with silica not to exceed 5% it will probably be necessary to tap the cinder into iron boxes or buggies, and have it kept clean from brick-bats and rubbish.		
243	Converter Slag	.75	
244	O. H. Slag	.75	
245	Cupola Slag	.50	
246	Metal Mixer Cinder	.75	
247	Converter Spittings	2.50	
248	Rod Mill Scale	1.75	
250	All other Scale	2.50	

The billing price for a net ton of zinc ashes and zinc dross delivered at Donora, Pa., will be the East St. Louis price of one net ton of prime Western slab zinc multiplied by the base percentages per table below.

For each variation of a full one percent over or under 75% for ashes and 95% for dross, add to or deduct $1.00 per net ton from prices for these respective materials, as determined. Variations of fractions of one percent not to be considered.

The price of prime western slab zinc to be here used as a basis for the current month's billing of zinc ashes and dross, shall be the preceding month's average East St. Louis price of zinc sales to subsidiary companies as determined by Mr. F. Parrish, such zinc price to be announced by Mr. Parrish to companies interested by the 8th of each month.

The analyses used for settlement purposes shall be determined by the Donora Zinc Works and be based on the dry weight, the same to be the net weight of the material in its natural state with a deduction therefrom of the amount of moisture as determined by the Donora Zinc Works laboratory. Where the analysis is in dispute the shipper and buyer shall ascertain the cause if possible and correct the trouble.

When the average monthly East St. Louis zinc price is—	Item 260 Zinc Ashes (of 75% zinc contents)	Item 262 Zinc Dross (of 95% zinc contents)
3.50¢ to 3.75¢ per pound	33.30%	62.37%
3.75¢ " 4.00¢ " "	34.85	63.38
4.00¢ " 4.25¢ " "	36.22	64.27
4.25¢ " 4.50¢ " "	37.43	65.04
4.50¢ " 4.75¢ " "	38.51	65.75
4.75¢ " 5.00¢ " "	39.48	66.37
5.00¢ " 5.25¢ " "	40.35	66.94
5.25¢ " 5.50¢ " "	41.14	67.44
5.50 " 5.75 " "	41.87	67.91

Item 260—Covers Zinc Skimmings, Zinc Ashes, and Washed Oxides. In each case 3% Chlorine is allowed free, any excess to be penalized at the rate of $1.00 per unit of Chlorine. Variations of fractions of one percent not to be considered.

Item 266—Sal Ammoniac Skimmings: Price to be $11.75 per net dry ton, delivered at Donora Zinc Works, on all shipments except those made from plants of T. C. I. and Columbia Steel. Shipments from T. C. I. will be $4.57 per net dry ton, F. O. B., Birmingham. Any shipments from Columbia will be specially priced.

Item 268—Sal Ammoniac Liquor (Flux Liquor). $40.00 per gross ton, F. O. B. cars, Donora (Dry Basis).

Table of prices for zinc ashes and dross

Month	East St. Louis Basing Price of Prime Western Zinc	Relative Inter-Co. Billing Price Delivered at Donora, Pa		
		Month	For 75% Zinc Ashes	For 95% Zinc Dross
September	$	October	$	$
October	$	November	$	$
November	$	December	$	$

225 *Government Exhibit P*

[File endorsement omitted.]

Memorandum

CHICAGO, ILL., MARCH 3, 1927.
File Com. 10405—TEB.

Internal Switching

At some of the plants served by the Elgin, Joliet and Eastern Railway, the internal switching or intra-plant movement is performed by the railway, and at other industries such service is performed by power owned and operated by the industry.

Charges for this service when performed by the E. J. & E. Railway are published in its Local Freight Tariff No. 22–I, effective September 1, 1923, copy of which is attached to this memorandum. This tariff provides generally for a charge of $5.00 per loaded car on shipments moving between two points within the same plant yard. Exceptions to this charge are made in connection with the handling of hot slag and hot metal in ladles, for which the charge is $1.50 per ladle.

Internal switching is performed by other carriers at plants served by them, and the general charge in the Chicago District is lower than that published by the E. J. & E. Railway for similar service at industries at which it performs the internal switching. Typical examples of this will be found in B. & O. C. T. Tariff I. C. C. 327, effective October 1, 1925, which provides in Item 6 that—

"When a shipper or receiver desires any movement between any two locations within the same plant or industry, such movement will be made for $3.15 per car, upon written request on the nearest agent of this company."

A similar rule and charge are provided in I. H. B. Railway I. C. C. 710, effective April 15, 1926, Item 5 reading as follows:

"When a shipper or receiver desires any movement made from one portion to another portion of an industry, such movement will be made for $3.15 per loaded car, regardless of the weight, including the handling of the empty, upon written request on the nearest agent of this company.

"When a shipper or receiver desires any movement made from one portion to another portion of an industry of an empty car, such movement will be made for $3.15 per movement, upon written request on the nearest agent of this company."

Other carriers have similar tariffs providing for like charges.

The E. J. & E. Railway has performed internal switching for some of the plants on its line for a number of years. The tariff files indicate that the original charge for handling loaded cars between two points within the same plant was $1.50 per car, with

lesser charges for the handling of hot slag and hot metal in ladles, these charges ranging from 35 cents to 90 cents per ladle. Such charges are found in Chicago, Lake Shore & Eastern Railway Tariff G. F. O. 1448, effective October 1, 1904. This tariff remained in effect until February 20, 1911, when E., J. & E. Tariff G. F. O. 1129–A was issued. This tariff continued substantially the same charges as quoted above.

Effective July 10, 1912, E., J. & E. Tariff 1129–B was issued, cancelling 1129–A, and providing for similar charges, but also providing for an addition at South Chicago, Ill., of $3.00 per car for handling finished material from the mills to the dock for loading on boats; and at Gary, Ind., $3.00 per car was published to apply on coke from the coke ovens to the mills and blast furnaces, and $3.00 per car for finished material from the mills to the dock for loading on boats. Rate of $1.50 per car was continued at the other points on all commodities except those referred to and except the hot slag and hot metal on which lesser charges continued to apply.

Effective October 1, 1912, G. F. O. 1129–C was published continuing the same rates as published in 1129–B, but adding at Gary, Ind., rate of $3.00 per car for handling miscellaneous freight between storerooms and coke ovens, and $3.00 per car on coal tar from coke ovens to mills.

Effective September 2, 1913, G. F. O. 1129–D was issued, cancelling 1129–C, changing rate on coke from the coke ovens to the mills and blast furnaces from a per car rate of $3.00 per car to rate of 8 cents per ton, subject to minimum weight of 60,000 pounds. No other changes.

Effective February 2, 1914, G. F. O. 1129–E was issued, cancelling G. F. O. 1129–D. No change was made.

Effective February 28, 1914, G. F. O. 1129–F was issued, cancelling 1129–E, making no change in rates.

Effective September 1, 1914, G. F. O. 1129–G was issued, cancelling 1129–F, and restoring the rate on coke from 8 cents per ton to $3.00 per car, regardless of weight. No other change.

Effective November 6, 1914, G. F. O. 1129–H was issued, cancelling 1129–G. No change in rates was made, but reference was made to the tariff providing for demurrage rules and regulations, published in E., J. & E Tariff No. 4.

Effective August 15, 1916, the numbering of the tariff was changed, and Local Freight Tariff 22 was issued, cancelling G. F. O. 1129–H. This tariff made no change in the rates, but added a provision at Joliet and Waukegan to the effect that—

"Whenever shippers or receivers desire any interior switching made, i. e. (a movement within the plant) such service will be performed at a charge of $1.50 per car for each movement."

Effective November 19, 1917, Tariff 22–A was issued, cancelling the Illinois intrastate application of rates in Tariff 22. This tariff

applied only at the Illinois stations: Joilet, Rockdale, South Chicago and Waukegan, and advanced rates at Joilet to $5.00 per car, and $1.00 per ladle on hot slag and hot metal in ladles; at South Chicago $5.00 per car and $1.85 per ladle on hot slag and $1.60 per ladle on hot metal. The charge for handling finished material from the mills to the dock for loading on the boats was also increased to $5.00 per car.

Effective December 20, 1917, Tariff 22–B was issued, cancelling the Indiana intrastate application of rates in Tariff 22, thus completing the cancellation of Tariff 22. This tariff applied at Indiana stations: Buffington, Gary, and Stockton, providing charge of $5.00 per car, except at Gary, Ind., the rates on hot slag and hot metal in ladles being made $1.35 per ladle. The rate on coke from the coke ovens to the mills and blast furnaces and on finished material from the mills to the dock for loading on boats was also increased to $5.00 per car.

Effective February 22, 1918, Tariff 22–C was issued, cancelling 22–B, making no change in rates but providing that—

"Whenever shippers or receivers located at points on the E., J. & E. Ry. in Indiana (except as provided above), desire any interior switching, that is a movement within the plant, such service will be performed at a charge of $5.00 per car for each movement."

Effective June 25, 1918, Tariff 22–D was issued, applying on Illinois intrastate traffic, cancelling Tariff 22–A. This tariff reflected the increases made by Director General in General Order No. 28, and provided for a per car rate of $6.50, the rate on hot slag and hot metal in ladles at Joilet being increased to $1.50 per ladle and at South Chicago hot slag in ladles was increased to $2.50 per ladle and hot metal in ladles to $2.00 per ladle. All other movements were on the basis of $6.50 per car.

Effective June 25, 1918, Tariff 22–E was issued, applicable to Indiana intrastate traffic, cancelling Tariff 22–C. This tariff was also issued in compliance with General Order No. 28, and provided for charge of $6.50 on movements of all carload freight, except that the rate on coke was made $5.00 per car plus 15 cents per ton of 2,000 pounds. The rate on hot slag or hot metal in ladles was $1.50 per ladle.

Effective September 23, 1918, Tariff 22–F was issued, applicable to Indiana intrastate traffic, providing for the cancellation of rate of $5.00 per car plus 15 cents per ton applicable to coke in the previous tariff, thus placing coke on the same basis as all other commodities, i. e., $6.50 per car. No other change was made.

Effective May 10, 1919, the Indiana and Illinois tariffs were consolidated by the publication of Tariff 22–G, cancelling 22–D and 22–F. This tariff continued rate of $6.50 per car on all commodities, but provided a charge of $2.50 per ladle on hot slag and hot metal in ladles, where the charge had previously been less.

Effective November 6, 1922, the tariff was republished as 22–H, cancelling 22–G, the only change made being to add North Chicago as a station at which interior switching would be performed at charge of $6.50 per car.

Effective September 1, 1923, Tariff 22–I was issued, cancelling 22–H. This tariff reduced the rates per car on all commodities from $6.50 per car previously in force to $5.00 per car. Rate on hot slag and hot metal in ladles was made $1.50 per ladle, instead of $2.50 as previously published.

In connection with the rate published on coke from the coke ovens at Gary to the blast furnaces and mills, originally established on the basis of $3.00 per car on July 10, 1912, in Tariff G. F. O. 1129-B, and subsequently increased under Director General's General Order No. 28 to $5.00 per car, plus 15 cents per ton of 2,000 pounds, published in Tariff 22–E, effective June 25, 1918, a complaint was filed by the Illinois Steel Company with the Railroad Administration, alleging that the rate of $5.00 per car plus 15 cents per ton was unjust and unreasonable, and, effective September 23, 1918, the rate was reduced to the rate in effect on all other commodities, viz: $6.50 per car. This was published in Tariff 22–F, cancelling 22–E, published for the Director General of Railroads and filed on one day's notice with the Interstate Commerce Commission under Freight Authority No. 1034, dated September 10, 1918.

During the period June 25, 1918, to September 23, 1918, charges for the intraplant movement of coke at Gary were collected on the basis of the published charge of $5.00 per car plus 15 cents per ton. A complaint was filed with the Interstate Commerce Commission by the Illinois Steel Company, and after due hearing the Commission entered an opinion (62 I. C. C. 349) as follows:

"Rate of $5.00 per car plus 15 cents per net ton for the transportation of coke in carloads from coke ovens to various points within the area of complainant's plant at Gary, Indiana, found to have been unjust and unreasonable during the period from June 25 to September 22, 1918. Reparation awarded."

A reasonable rate was found to be $6.50 per car. The complainants were required to comply with Rule V of the Rules and Practices, and, having done so, the Commission entered an order on the First day of November, A. D. 1921, in Docket No. 11269, requiring the Director General, as Agent, and the Elgin, Joliet & Eastern Railway Company to "pay unto complainant, Illinois Steel Company, on or before December 20, 1921, the sum of $59,320.32, with interest thereon at the rate of 6 per cent per annum from August 24, 1918, as reparation on account of an unreasonable rate charged for the transportation of 15,450 carloads of coke, from coke ovens to various points within the area of complainant's plant at Gary, Ind."

Internal switching or intraplant movement is performed by the Elgin, Joliet and Eastern Railway at the following plants on its line:

Plant:	Location
Universal Portland Cement Co	Buffington, Ind.
Illinois Steel Co	Gary, Ind.; (Yard) Stockton, Ind.; Joliet, Ill.; South Chicago, Ill.
American Sheet & Tin Plate Co	Gary, Ind.
American Steel & Wire Co	Joliet, Ill.; Rockdale, Ill.

Occasionally intraplant switching is performed at plants other than indicated in the foregoing tabulation, the charge for which is provided in the tariff of $5.00 per loaded car.

The greatest amount of intra-plant switching is performed at the plant of the Illinois Steel Company, at Gary, Ind. Typical movements are as follows:

From—	To—	Commodity
Coke Ovens	Blast Furnaces	Coke.
Billet Mill	Merchant Mill	Billets.
Ore Dock	Open-hearth Furnaces	Ore.
Various Depts. of Mill	Dump on Lake Front	Dirt and Slag.
Blast Furnaces	Open-Hearth Furnaces	Hot Metal.

The number of locomotives in use at a plant vary, of course, with the volume of business. At present there are in service at the plants indicated the following locomotives:

No. of locomotives:	Plant
25	Illinois Steel Co., Gary, Ind.
19	Illinois Steel Co., South Chicago, Ill.
7	Illinois Steel Co., Joliet, Ill.
2	Universal Portland Cement Co., Buffington, Ind.
2	American Sheet & Tin Plate Co., Gary Ind.
1	American Steel & Wire Co., Joliet, Ill.
1	American Steel & Wire Co., Rockdale, Ill.

It should be understood that these locomotives are not occupied solely in intra-plant work, but are engaged also in general terminal work for the railroad company.

The revenue derived by the E., J. & E. Railway from intra-plant switching service is substantial. Figures in the following tabulation indicate total amount of revenue received from all switching. The revenue from intra-plant switching and from switching of other kinds such as reciprocal or between industry switching, is not segregated by the amount of revenue derived from each kind of switching service performed, but the intra-plant switching constitutes by far the greatest bulk of switching service performed by the E., J. & E. Railway.

Revenue derived from switching service for the years indicated was as follows:*

1923	$2,628,794.24
1924	1,804,983.31
1925	2,054,451.36
1926	2,073,765.18

T. E. BOND.

TEB/IAH

No supplement to this tariff will be issued except for the purpose of cancelling the tariff.

I. R. C. No. 509 cancels I. R. C. No. 495.

Ill. C. C. No. 467 cancels Ill. C. C. No. 450.

Applicable on Illinois and Indiana Intrastate Traffic only; will not apply on Interstate traffic.

Elgin, Joliet and Eastern Railway Company

Local Freight Tariff No. 22-I cancels Local Freight Tariff No. 22-H. Internal Switching. (Rates provided herein apply only to intra-plant movement at industries located at stations in Illinois and Indiana.)

Rules and Regulations

Demurrage: The rules, regulations, and charges applicable to demurrage, as provided in Agent B. T. Jones' Freight Tariff No. 4-C, Ill. C. C. No. 129, I. R. C. No. 1D-223 (E., J. & E. Ry. Co. Freight Tariff No. 5222-C), supplements thereto or reissues thereof, will apply in connection with this tariff.

Other rules and regulations: The rules, regulations, and charges provided in E., J. & E. Ry. Co. Tariff No. 2-E, Ill. C. C. No. 461, and I. R. C. No. 508, supplements thereto or reissues thereof, will not apply in connection with the rates named in this tariff.

Issued July 25, 1923. Effective September 1, 1923.

T. E. Bond, Traffic Manager, E., J. & E. Ry. Co., Chicago, Ill.

J. H. Mangold, G. F. A., E., J. & E. Ry. Co., Chicago, Ill.

Issued by—

J. B. Davies, A. G. F. A., E., J. & E. Ry. Co., Chicago, Ill.

Mailing List No. 22.

* The above information is taken from the Annual Reports of the Elgin, Joliet and Eastern Railway.

Between (Except as noted)	And	Commodity	↓Rates in Dollars and Cents per Car (Except as noted)
Buffington, Ind.			
Universal Portland Cement Co.'s Plant			
All Departments	All Departments	All Commodities	$5.00.
Gary, Ind.			
Illinois Steel Co.'s Plant			
All Departments (except as otherwise provided herein).	All Departments (except as otherwise provided herein).	All Commodities (except as otherwise provided herein).	$5.00.
All Departments of Mill	Repair Shop	Empty Cars	$1.50.
All Departments of Mill	All Departments of Mill	Hot Slag in ladles	$1.50 per ladle.
All Departments of Mill	All Departments of Mill	Hot Metal in ladles	$1.50 per ladle.
From—	To—		
Mills	Dock for loading on Boats	Finished Material	$5.00.
American Sheet and Tin Plate Co.'s Plant			
All Departments	All Departments	All Commodities	$5.00.
Stockton, Ind.			
Illinois Steel Co.'s Yard			
Stock Piles	Stock Piles	All Commodities	$5.00.
★Joliet, Ill.			
Illinois Steel Co.'s Plant			
All Departments	All Departments	All Commodities not otherwise provided for herein.	$5.00.
		Hot Metal and Skulls in Ladles.	$1.50 per Ladle.
		Hot Slag in Ladles	$1.50 per Ladle.
American Steel and Wire Co.'s Plant			
All Departments	All Departments	All Commodities not otherwise provided for herein.	$5.00.
★Rockdale, Ill			
American Steel and Wire Co.'s Plant			
All Departments	All Departments	All Commodities not otherwise provided for herein.	$5.00.
South Chicago, Ill.			
Illinois Steel Co.'s Plant			
All Departments (except as otherwise provided herein).	All Depratments (except as otherwise provided herein).	All Commodities (except as otherwise provided).	$5.00.
All Departments of Mill	Repair Shop	Empty Cars	$1.50.
All Departments of Mill	All Departments of Mill	Hot Slag in Ladles	$1.50 per Ladle.
All Departments of Mill	All Departments of Mill	Hot Metal in Ladles	$1.50 per Ladle.
From—	To—		
Mills	Dock for loading on Boats.	Finished Material	$5.00.

Waukegan, Ill., and North Chicago, Ill.

Whenever shippers or receivers desire any interior switching made, i. e. (a movement within the plant,, such service will be performed at a charge of $5.00 per car for each movement.

Whenever shippers or receivers located at points on the E., J. & E. Ry. Co. in Indiana (except as provided above), desire any interior switching, that is a movement within the plant; such service will be performed at a charge of ↓$5.00 per car for each movement.

NOTE.—When a car is handled loaded and empty in one transportation service a "movement" will consist of the handling of both load and empty.

Explanation of Reference Marks

★ Charge for internal switching performed at an industry located within the switching limits of Joliet or Rockdale, Ill., and not otherwise provided for, will be ↓$5.00 per car for each movement.

↓ Indicates Reduction.

226 *Government Exhibit Q*

[File Endorsement Omitted.]

United States Steel and Carnegie Pension Fund

Pension Rules Effective May 1, 1931

United States Steel and Carnegie Pension Fund

Directors: A. F. Banks, Chicago, Ill.; E. J. Buffington, Chicago, Ill.; L. H. Burnett, Pittsburgh, Penna.; D. M. Clemson, Pittsburgh, Penna.; C. L. Close, New York, N. Y.; A. N. Diehl, New York, N. Y.; G. L. Edwards, New York, N. Y.; J. A. Farrell, New York, N. Y.; W. J. Filbert, New York, N. Y.; R. A. Franks, New York, N. Y.; O. J. H. Hartsuff, Pittsburgh, Penna.; J. A. Hatfield, New York, N. Y.; I. Lamont Hughes, Pittsburgh, Penna.; J. S. Keefe, Cleveland, Ohio; D. G. Kerr, Pittsburgh, Penna.; Thomas Morrison, Pittsburgh, Penna., Thomas Moses, Pittsburgh, Penna.; W. C. McCausland, Pittsburgh, Penna.; John S. Oursler, Pittsburgh, Penna.; E. W. Pargny, Pittsburgh, Penna.; H. C. Ryding, Birmingham, Ala.; LeRoy Salsich, Duluth, Minn.; Myron C. Taylor, New York, N. Y.; F. W. Waterman, Pittsburgh, Penna.

Finance Committee: Myron C. Taylor, Chairman; C. L. Close, G. L. Edwards, W. J. Filbert, R. A. Franks.

Pension Committee: C. L. Close, Chairman; L. H. Burnett, E. W. Pargny.

General Executive Officers: J. A. Farrell, President, New York, N. Y.; Myron C. Taylor, Vice President, New York, N. Y.; W. J. Filbert, Secretary, New York, N. Y.; R. A. Franks, Treasurer, New York, N. Y.

J. B. Erskine, Manager; J. H. Wood, Assistant Manager; Oliver Building, Pittsburgh, Penna.

United States Steel and Carnegie Pension Fund

The United States Steel and Carnegie Pension Fund was established in the year 1910 by the joint action of the United States Steel Corporation and Andrew Carnegie, and began operations on January 1, 1911. Its purpose is the payment of pensions to superannuated or incapacitated employees of the United States Steel Corporation and its subsidiaries. This Fund and the Pension Plan of the United States Steel Corporation are administered by the Board of Directors of United States Steel and Carnegie Pension Fund, a non-stock corporation formed under the laws of the Commonwealth of Pennsylvania, through a Manager appointed by the Board.

Pension Rules (Effective May 1, 1931)

Who May Obtain Pensions

1. Employees of the United States Steel Corporation or of any other corporation a majority of whose capital stock is owned or controlled by the United States Steel Corporation, also employees of the United States Steel and Carnegie Pension Fund, may obtain pensions under the following conditions:

First. Pensions by Compulsory Retirement:

2. All men who have been twenty-five (25) years or longer in the service, as specified in Rule 1, and have reached the age of seventy (70) years shall be retired and be entitled to pensions.

3. All women who have been twenty-five (25) years or longer in the service, as specified in Rule 1, and have reached the age of sixty (60) years shall be retired and be entitled to pensions.

Second. Pensions by Retirement at Request:

4. Any man who has been twenty-five (25) years or longer in the service, as specified in Rule 1, and has reached the age of sixty-five (65) years may be retired and be entitled to pension, either at his request or at the request of his employing officer.

5. Any woman who has been twenty-five (25) years or longer in the service, as specified in Rule 1, and has reached the age of fifty-five (55) years may be retired and be entitled to pension, either at her request or at the request of her employing officer.

Third. Pensions for Permanent Incapacity:

6. Any employee who has been twenty-five (25) years or longer in the service, as specified in Rule 1, and has become permanently totally incapacitated through no fault of his own as a result of sickness or injuries may be pensioned at the discretion of the Board of Directors.

Fourth. Pensions under Exceptional Conditions:

7. Employees as specified in Rule 1, who cannot qualify for pensions under any of the foregoing rules may be pensioned at the discretion of the Board of Directors in case the conditions attending their initial entrance into the service and/or continuance thereof were unusual, special or exceptional, and/or required continuity of service had been broken from causes not of their own making, provided, however, that any such cases shall be considered by the Board of Directors only if same have the endorsement of (a) the employing company, (b) the Pension Committee of United States Steel and Carnegie Pension Fund, and (c) the Finance Committee of the United States Steel Corporation.

Amount of Pensions

8. The monthly pensions to be paid will be made on the following basis subject to the provisions of Rules 9, 17 and 24:

For each year of service one per cent (1%) of the average monthly pay received during the last ten years of service.

Illustration: An employee who has been twenty-eight (28) years in the service and has received in the last ten years of service an average monthly pay of one hundred ten dollars ($110) will receive a pension of twenty-eight per cent (28%) of one hundred ten dollars ($110) or thirty dollars and eighty cents ($30.80) a month.

9. The amounts for pensions which may be granted in accordance with provisions of Rule 7, shall in every case be fixed specifically by the Board of Directors but in no case shall such amount exceed the pension which the beneficiary would receive under and in accordance with Rule 8 hereof applied to the number of years' service which he may have creditable for pension calculation consideration.

How to Obtain Pensions

Pensions by Compulsory Retirement

10. Employing officers will make prompt report to the Manager of the Fund of every man who has been twenty-five (25) years or longer in the service and has reached the age of seventy (70) years, and of every woman who has been twenty-five (25) years or longer in the service and has reached the age of sixty (60) years. These reports will be sent to the president of the company concerned for his approval.

Pensions by Retirement at Request

11. Any man who has been twenty-five (25) years or longer in the service and has reached the age of sixty-five (65) years, and any woman who has been twenty-five (25) years or longer in the service and has reached the age of fifty-five *years* (55) years, who wishes to be retired and pensioned, should notify his or her employing officer.

12. Any employing officer who wishes to retire an employee who has reached the age and has had the length of service fixed for retirement at request, must notify such employee and report to the Manager of the Fund the request that such employee be retired and pensioned. These requests, whether from an employee or an employing officer, will be sent to the president of the company concerned for his approval.

Pensions for Permanent Incapacity

13. Any employee who has served twenty-five (25) years and who is permanently totally incapacitated through no fault of his own

as a result of sickness or injuries may notify his employing officer and apply for a pension. Every such application will be sent by the employing officer to the president of the company concerned for his approval. In every such case it must be shown to the satisfaction of the Board of Directors by physical examination that the employee applying for a pension is permanently totally incapacitated to continue in the service, whereupon the employee may be pensioned at the discretion of the Board of Directors.

General Regulations

14. Pensions from the Fund will be paid only to those employees who have given their entire time to the service of corporations included under the provisions of the Fund.

15. Any pension granted from the Fund to a retired employee shall not be forfeited by him through his engaging, subsequent to the granting of the pension, in other business not engaged in by the United States Steel Corporation or any of its Subsidiary Companies, or in any other employment that would not be considered prejudicial to the interest of the United States Steel Corporation. Any pension granted shall be discontinued in case the beneficiary may subsequently re-enter the service as an employee of the United States Steel Corporation or any of the Subsidiary Companies; but this provision shall not apply in case a pensioned employee may be temporarily engaged for specialized work, provided such engagement is specifically authorized by Finance Committee of the United States Steel Corporation.

16. Length of service shall be reckoned from the date since which the employee has been continuously in the service to the date when retired.

17. In reckoning length of service, all time lost shall be deducted, excepting absence resulting from seasonal employment, and absence not in excess of one (1) month when due to leave of absence, suspension, lay-off or disability.

Any absence between April 1, 1901 (date of inauguration of United States Steel Corporation) and January 1, 1911 (date of inauguration of Pension Fund) which continued for more than two (2) years, constitutes a break in continuity of service and causes loss of credit for all service previous to the break, excepting absence due entirely to lay-off or to disability and which did not extend beyond three (3) years.

From and after January 1, 1911, absence exceeding six (6) months, when due to leave of absence or to suspension, constitutes a break in continuity of service and causes loss of credit for all service previous to the break.

Absence exceeding two (2) years, when due to lay-off or to disability, constitutes a break in continuity of service and causes loss of

credit for all service previous to the break; provided, however, that employees injured while on duty may retain credit for previous service until termination of the period for which statutory compensation is payable.

Employees who voluntarily quit the service will lose credit for all previous service.

Employees who are discharged from the service will lose credit for all previous service unless re-employed within six (6) months.

18. Employees prevented from continuing at work by reason of the permanent closing, or disposal of mill, mine, railway, shop, or department, may become eligible for pension, provided that it is impossible for them to continue in the service elsewhere, and provided that they have reached the age of fifty-five (55) years and had been twenty-five (25) years or longer in the service, or, regardless of age if employees have been thirty-five (35) years or longer in the service, subject to the rules and regulations governing continuity of service. Pensions for such employees, when granted, shall be according to length of service and shall bear proportionate relation to full, regular pensions, as follows:

For service of 25 to 29 years inclusive, and 55 years of age or over; 50 percent of regular pension.

For service of 30 to 34 years, inclusive, and 55 years of age or over; 60 percent of regular pension.

For service of 35 to 39 years, inclusive, and 55 years of age or over; 70 percent of regular pension.

For service of 40 to 44 years, inclusive, and 55 years of age or over; 80 percent of regular pension.

For service of 45 to 49 years, inclusive, and 55 years of age or over; 90 percent of regular pension.

For service of 50 years or more and 55 years of age or over; 100 percent of regular pension.

For service of 35 years or more and under 55 years of age; 50 percent of regular pension.

Any pension granted under this Rule 18 shall not become effective until the expiration of three (3) months following the month in which employee was last on duty in the service.

19. Pension shall commence with the first day of the calendar month following the month in which employment ceased (excepting pension granted under Rule 18) provided that application for pension be made not later than one (1) month after employment ceased; otherwise pension shall commence with the first day of the calendar month in which application for retirement is made, or, in the event of physical incapacity, pension shall commence with the first day of the calendar month in which it became evident that employee was incapacitated to continue in service.

Pensions shall not be paid for time during which payments are made from any relief fund operated by the United States Steel Corporation or any subsidiary company, nor for time during which an employee injured while on duty is entitled to statutory compensation.

20. Pensions shall be paid monthly or quarterly, as may from time to time be determined by the Board of Directors. If paid monthly, such payments shall be made at the close of each month, and shall terminate with payment for the month in which the death of the retired employee occurs or the month in which pension may be revoked. If pensions are paid quarterly, payment shall be made on the last day of each February, May, August, and November, for respectively the calendar quarters ending March 31st, June 30th, September 30th, and December 31st; and in case of demise, or if pensions are revoked, same shall terminate with payment of the pro rata amount for the quarter calculated by including for such pro rate the entire month in which the death of the retired employee occurs or his pension is revoked.

21. Whenever the terms "service" and "in the service" are used in these rules, they mean employment by the United States Steel Corporation, by one or more corporations a majority of whose stock is owned or controlled by the United States Steel Corporation, by their predecessors, or by the United States Steel and Carnegie Pension Fund.

22. Pensions may be withheld or terminated in case of misconduct on the part of the beneficiaries, or for other cause sufficient in the judgment of the Board of Directors to warrant such action, or on request of Finance Committee of United States Steel Corporation.

23. In order that direct personal relations with retired employees may be preserved and that such employees may continue to enjoy the benefits of pensions granted them, no assignment of pensions will be permitted or recognized under any circumstances; neither shall pensions be subject to attachment or other legal process for debts of the beneficiaries.

24. This Pension Plan is a purely voluntary provision for the benefit of employees superannuated or totally incapacitated after long and faithful service, and constitutes no contract and confers no legal rights upon any employees; and the Board of Directors expressly reserves to itself the right from time to time to adopt a new basis and modify these pension rules at its discretion for the payment of pensions which may reduce in amount any pensions theretofore or thereafter granted, provided, however, that any such modifications shall not reduce the aggregate amount of pensions paid to a sum less than the net annual income of the United States Steel and Carnegie Pension Fund from its Trust Fund as originally created and in-

creased by any surplus deemed applicable by the Board of Directors.

25. The Manager of the Fund shall decide all questions arising out of the administration of the Fund and relating to employees, subject to a right of appeal to the Board of Directors within thirty (30) days after notice to the persons interested of the Manager's decision. The action of the Board of Directors or of any committee designated by the Board to hear such appeals shall be final and conclusive.

26. Neither the creation of this Fund nor any other action at any time taken by the Board of Directors shall give to any employee a right to be retained in the service, and all employees remain subject to discharge to the same extent as if this Pension Fund had never been created.

27. An annual report giving an account of the Fund and its administration will be made as soon after the first of each year as practicable, and copies of such report will be posted at all mills, mines, railroads, shops, and other works, and published as may be designated by the Board of Directors.

28. By order of the Board of Directors, these Rules for the administration of this Fund shall apply to those in the service on or after May 1, 1931 * * *.

227 *Government's Exhibit R*

File endorsement omitted.

[Copy]

Director	Elected	Terminated
E. H. Gary	March 21, 1899	February 28, 1920.
E. Shearson	March 21, 1899	June 11, 1902.
Chas. M. Schwab	April 15, 1901	October 30, 1905.
D. G. Reid	June 12, 1901	June 8, 1904.
Wm. Edenborn	do	Do.
W. E. Corey	June 8, 1904	June 14, 1911.
R. Trimble	do	June 9, 1920.
W. J. Filbert	Oct. 30, 1905	Do.
J. A. Farrell	June 14, 1911	February 28, 1920.

228

Government Exhibit S

[File endorsement omitted.]

Elgin, Joliet & Eastern Railway Co.—Joliet Division

Comparative statement of mills operated, engines worked, clerk and yard clerks employed during weeks ending December 25th and December 18th, 1926

Mills operated				Engines operated			Clerical forces					
	No. mills	Mills opd.		Location	Eng. wkd.		Off. clks.		Yd. clks.			
		12/25	12/18		12/25	12/18	Location	12/25	12/18	12/25	12/18
Ill. Steel Co., Joliet				Mill Yard								
Blast Furnace	4	1	1	Coke Ovens	2	2	Mill Yd	0	0	7	7
Billet Mill	1	1	1	Blast Furn	3	3	E. Joliet	68	68	25	25
Convertor	1	1	1	A. S. & W.-Scott	1	1	Waukegan	10	10	3	3
Rod Mills	3	2	2	Various	8	9					
Cont. Jt. Mill	1	1	1								
Spike Mill	1	1	1	E. Joliet Yard Serv.	41	41					
Bolt & Nut Mill	1	1	1	A. S. & W.-Rock	1	1					
Merchant Mill	1	1	1								
Splice Mill	1	1	1	Waukegan							
Cooper Shop	1	1	1								
Coke Ovens	4	2	2	A. S. & W. Co.#							
A. S. & W. Co.											
Rockdale	1	1	1								
Scott St	1	1	1								
Waukegan	4	4	4								
Total	25	19	19		56	57		78	78	35	35

A. S. & W. Co., perform their own switching.

YARD ENGINES WORKED ON ENTIRE DIVISION

	Week Ending December 25—				Week Ending December 18—			
	8:00 A. M.	4:00 P. M.	MN.	Total	8:00 A. M.	4 P. M.	MN.	Total
Waukegan	2	2	1	5	3	2	1	6
Coal City								
E. Joliet	17	13	12	42	17	13	12	42
Jol-Mill Yd	6	4	4	14	7	4	4	15
So. Chgo. 98th St	1	0	0	1	1	0	0	1
Westville	1	0	0	1	1	0	0	1
Chgo. Hts	1	0	0	1	1	0	0	1
Dyer	2	3	0	5	2	3	0	5
Total	30	22	17	69	32	22	17	71

Copies made for Mr. Stearns 5/27/28.

Comparative statement of mills operated, engines worked, clerks and yard clerks employed during week ending December 18 and December 25, 1926

Location	No. of mills	Mills operated		Engines worked		Clerks in office		Clerks in yard	
		12/18	12/25	12/18	12/25	12/18	12/25	12/18	12/25
South Chicago						25	25	27	27
Rail Mill	2	1	1						
Plate Mills	3	2	2						
Blast Furnaces	11	6	6	9	9				
Open Hearths	29	14	13	1	1				
Structural Mills	2	2	2	5	5				
Blooming Mills	2	2	2						
Slab Mill	1	1	1						
Sintering Plant	1	1	1						
Refractory Plant	1	1	1						
Drops	7	0	0						
Skull Cracker	1	1	1						
Rail Yard	1	1	1						
Electric Furnace	1	1	1						
Convertor Works	1	1	1						
Forge Press	1	1	1						
Train Yard				6	6				
Roustabout Engines				0	0				
Yards B and R				5	5				
Yards F and B				0	0				
East Side				5	5				
Fly Hole				6	6				
Gran. Cinder				0	0				
Misc. Engines				5	5				
	64	35	34	42	42	25	25	27	27
Ind. Harbor Agent						2	2		
Buffington	4	4	4	7	7	10	10		
Gary Agent						36	36		
Kirk Yard						4	4	44	44
Yard Switch				23	23				
Repair Track				2	2				
Stockton				3	2				
AS&TP Co				2	2				
City Track				1	1				
Transfers				14	13				
				45	43	4	4	44	44
Gary Plant						2	2	22	22
Blast Furnaces	12	8	8	11	12				
Open Hearths	45	32	32						
Rail Yard	1	1	1						
Slab & Wheel Mill	2	2	2						
Billet Bl. & Sh. Bar	3	3	3						
Axle & Mer. Mills	11	11	11						
Plate Mills	2	1	1						
Scrap Sh. & Sk. Ckr	5	5	5						
Benzol Plant	1	1	1						
Sintering Plant	1	1	1						
Pig Machine	1	1	1						
Refractory Plant	2	2	1						
Coke Batteries	11	8	8	9	9				
Roustabout Engines				34	34				
Open Hearths				0	0				
Misc. Engines				8	7				
Yard Cleaning				1	1				
	97	76	76	63	63	2	2	22	22

	Tricks						Total	
	First		Second		Third			
	Sw.	Tfr.	Sw.	Tfr.	Sw.	Tfr.	Sw.	Tfr.
Gary Division Engines:								
South Chicago	18	1	14	1	7	1	39	3
Buffington	4		2		1		7	
Kirk Yard	9	8	10	2	10	4	29	14
Gary Plant	27		20		16		63	
	58	9	46	3	34	5	138	17

Copy made for Mr. Stevens 5/27/27.

229 *Government's Exhibit T*

[File endorsement omitted.]

IN RE: APPROPRIATION REQUESTS

Numbers U. S. S. 4553, E., J. & E. 4553, A. F. E. 2574.

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY,
Chicago, February 9th, 1926.

Mr. A. F. BANKS,
President.

An appropriation is requested to cover the cost of widening embankments during the year 1926. The material to be used for this work consists of cinders and other refuse which we would in any event have to dispose of and if not used for this purpose would have to be unloaded and dumped at some convenient point. At locations where banks are to be widened, embankments are too narrow to maintain proper shoulder and economically maintain our tracks in proper condition.

		Amount
Estimate J-3276	Leighton to Barrington	$8,093.04
" J-3277	Frontenac to Normantown	3,476.00
" J-3278	Normantown and Walker	2,325.20
" J-3279	Griffith to Shearson	3,735.20
" J-3280	E. Joliet, Ill., to State Line, Ind	14,375.20
	Estimated cost	$32,004.64

NOTE.—Describe on this page the character of the work to be done, the detailed estimated cost hereof, reasons therefor, estimated saving in cost or increase in product which will result, etc. If more space is required, use succeeding page.

I approve the foregoing request and recommend an appropriation of Thirty-two thousand four and 64/100 Dollars therefor.

A. F. BANKS, *President.*

FEBRUARY 9TH, 1926.

The cost of the foregoing improvement will be charged to:

Road	$31,492.64
Equipment	$
Improvements on Leased Railway Property	$
Miscellaneous Physical Property	$
Loss on Retired Road and Equipment	$
Operating Expenses	$512.00
Other Accounts	$

G. W. WILLIAMS,
Chief Accounting Officer.

Recommended.

President of U. S. Steel Corporation.

----------19---

Numbers U. S. S. 5016×, E., J. & E. 5016×, A. F. E. 3330.

ELGIN, JOLIET, AND EASTERN RAILWAY COMPANY.

Chicago, January 5th, 1928.

Mr. A. F. BANKS.
President.

An appropriation is requested for cost of drilling new well, installing pumping machinery, and making necessary alterations and additions to Pump House at Dyer, Ind. In the past our water supply at this station has been secured from two wells and water which was carried from surface slough located adjacent to the station. Recently a drainage district was organized in this locality, and with the installation of this drainage system it has dried up the slough and the surrounding country, so that our supply of water has very materially decreased. We believe that by putting a deep well at this point with proper pumping facilities we can secure sufficient water to take care of our requirements. As this is one of our most important water stations it is absolutely necessary that we have an adequate supply of water at all times and it is our desire to put down a well as early as the weather will permit.

Est. No. J-3632.

Est. Cost, $18,137.00.

Covered by Contract #1825.

A. F. E. #4583 covers over-run on this A. F. E.

For log of this well and one at Frankfort furnished S. Oil Co. see V. P. File #227, Nov. 29.

I approve the foregoing request and recommend an appropriation of Eighteen Thousand One Hundred thirty seven and 00/100 Dollars therefor.

A. F. BANKS, *President.*

JANUARY 5TH, 1928.

The cost of the foregoing improvement will be charged to:

Road	$15,892.00
Equipment	$
Improvements on Leased Railway Property	$
Miscellaneous Physical Property	$
Loss on Retired Road and Equipment	$
Operating Expenses	$ 2,245.00
Other Accounts	$

C. G. HOLM.
Chief Accounting Officer.

U. S. Steel Corporation, Recommended by Finance Committee, Feb. 7, 1928. Geo. K. Leet, Secretary.

J. A. FARRELL,
President of U. S. Steel Corporation.

Numbers U. S. S. 5027, E., J. & E. 5027, A. F. E. 3249.

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY,
Chicago, January 10th, 1928.

Mr. A. F. BANKS,
President.

An appropriation is requested for increased weight of rails, track fastenings, and switch material, E., J. & E. Ry. Co., as covered in 1928 Budget:

Est. No.	*Amount*
J-3751—Waukegan to Spaulding	$2,877.35
J-3752—Spaulding to Normantown	16,876.61
J-3753—Normantown to East Joliet	9,375.89
J-3754—E. Joliet to State Line, Ind	4,159.44
J-3755—State Line, Ill., to Porter	17,832.16
J-3756—Normantown to Aurora	263.08
J-3757—Walker to So. Wilmington	1,442.72
J-3758—Rockdale Jct. to Rockdale	296.06
J-3759—Griffith to Shearson	6,642.09
J-3760—Hammond to Whiting	6,050.51
Total	$65,815.91

For other papers see A. F. E. #3255.

I approve the foregoing request and recommend an appropriation of Sixty-five Thousand Eight Hundred fifteen and 91/100 Dollars therefor.

A. F. BANKS, *President.*

JANUARY 10TH, 1928.

The cost of the foregoing improvement will be charged to:

Road	$65,815.91
Equipment	$
Improvements on Leased Railway Property	$
Miscellaneous Physical Property	$
Loss on Retired Road and Equipment	$
Operating Expenses	$
Other Accounts	$

C. G. HOLM,
Chief Accounting Officer.

Recommended.

President of U. S. Steel Corporation.

---------- 19--

Numbers U. S. S. 5054×, E., J. & E. 5054×, A. F. E. 3298.

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY.
Chicago, January 31st, 1928.

MR. A. F. BANKS,
President.

An appropriation is requested for cost of bridge and culvert work for E., J. & E. Railway during year 1928 as covered by Estimates listed below:

Estimate Number:

		Estimated Cost
3298	J–3347–A	$6,496.00
99	J–3634	713.00
3300	J–3641	231.00
01	J–3646	1,123.00
02	J–3654	2,433.00
03	J–3660	836.00
04	J–3665	104.00
05	J–3666	3,861.00
06	J–3676	1,071.00
07	J–3678–A	733.00
08	J–3679	1,681.00
09	J–3683	220.00
3310	J–3684	176.00
11	J–3685	181.00
12	J–3686	211.00
13	J–3687	249.00
14	J–3688	113.00
15	J–3689	138.00
16	J–3690	152.00
17	J–3735	1,769.00
18	J–3747	2,248.00
19	J–3761	298.00
	Total	$24,437.00

I approve the foregoing request and recommend an appropriation of Twenty-four Thousand Four Hundred thirty seven and 00/100 Dollars therefor.

A. F. BANKS, *President.*

JANUARY 31st, 1928.

The cost of the foregoing improvement will be charged to:

Road	$14,380.00
Equipment	$
Improvements on Leased Railway Property	$
Miscellaneous Physical Property	$
Loss on Retired Road and Equipment	$
Operating Expenses	$10,032.00
Other Accounts	$25.00

C. G. HOLM,
Chief Accounting Officer.

Recommended,

President of U. S. Steel Corporation.

---------- 19--

Numbers U. S. S. 5291, E., J. & E. 5291, A. F. E. 3661.

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY,
Chicago, February 1st, 1929.

Mr. A. F. BANKS,
President.

An appropriation is requested for cost of constructing a building with locker, toilet, and washroom facilities for use of our switchmen at north end of our yards, E. Joliet, Ill. This is necessary in order to provide facilities for the welfare and comfort of our employes, which conform to regulations adopted by the State of Illinois.

Est. No. J-3949.

Est. Cost, $6,154.00.

I approve the foregoing request and recommend an appropriation of Six Thousand One Hundred fifty-four and 00/100 Dollars therefor.

A. F. BANKS, *President.*

FEBRUARY 1ST, 1929.

The cost of the foregoing improvement will be charged to:

Road	$6,154.00
Equipment	$
Improvements on Leased Railway Property	$
Miscellaneous Physical Property	$
Loss on Retired Road and Equipment	$
Operating Expenses	$
Other Accounts	$

C. G. HOLM,
Chief Accounting Officer.

Recommended.

President of U. S. Steel Corporation.

---------- 19--

Numbers U. S. S. 5412×, E., J. & E. 5412×, A. F. E. 3844.

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY,

Chicago, September 18th, 1929.

Mr. A. F. BANKS,

President.

An appropriation is requested for our proportion of special assessment levied by the City of Joliet, Ill., covering the construction of a new slough drain concrete sewer in that city to replace present slough drain, which is an open ditch running through the City, and which overflows after heavy rains, flooding basements and damaging property.

Est. No. J–4026.

Est. Cost, $4.156.76.

I approve the foregoing request and recommend an appropriation of Four Thousand One Hundred fifty-six and 76/100 Dollars therefor.

A. F. BANKS, *President.*

SEPTEMBER 18TH, 1929.

The cost of the foregoing improvement will be charged to:

Road	$4,141.20
Equipment	$
Improvements on Leased Railway Property	$
Miscellaneous Physical Property	$
Loss on Retired Road and Equipment	$
Operating Expenses	$
Other Accounts	$ 15.56

C. G. HOLM,

Chief Accounting Officer.

Recommended.

President of U. S. Steel Corporation.

----------19--

Numbers U. S. S. 5468, E., J. & E. 5468, A. F. E. 4131.

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY.

Chicago, December 12th, 1929.

Mr. A. F. BANKS,

President.

An appropriation is requested for cost of eight (8) Mikado Locomotives. These locomotives are to replace consolidated type of engines which we are converting from road engines to switch engines. The latter will be necessary to care for the increased business due to additional Plants of the Illinois Steel Company at Gary and South Chicago, and also to replace small obsolete engines which are too light for our service, and which if we are unable to sell we are scrapping as they come in for heavy repairs. These engines run from 24 to 29 years of age, are expensive to maintain and not suitable for our service.

The consolidated type of engines referred to above now in road service and which will be assigned to switching and transfer work make an excellent engine for this class of service. By making a

change of this kind we can handle our business to better advantage and reduce the number of engines operated, resulting in a saving in Operating Expenses. We anticipate on receipt of the eight locomotives asked for in this appropriation they will replace at least ten of the consolidated engines which will be assigned to transfer and switching work—the latter in turn replacing twelve or thirteen of the small switch engines referred to above.

Est. Cost, $620,000.00.

This item is included in our 1930 Budget.

All other papers Re-Purchase of Locos. Bids recd. etc., filed in Purch. Agts. file.

I approve the foregoing request and recommend an appropriation of Six Hundred twenty thousand and 00/100 Dollars therefor.

A. F. BANKS, *President.*

DECEMBER 12TH, 1929.

The cost of the foregoing improvement will be charged to:

Road	$----------
Equipment	$620,000.00
Improvements on Leased Railway Property	$----------
Miscellaneous Physical Property	$----------
Loss on Retired Road and Equipment	$----------
Operating Expenses	$----------
Other Accounts	$----------

U. S. Steel Corporation, recommended by Spec'l Comm. of Finance Comm. (with power); Apr. 22, 1930. Geo. K. Leet., secretary.

C. G. HOLM,
Chief Accounting Officer.
J. A. FARRELL,
President of U. S. Steel Corporation.

Instructions

All appropriation requests, including those for additional amounts, should be rendered in triplicate.

All requests requiring the recommendation of the U. S. Steel Corporation, i. e., expenditures involving an outlay of $10,000 or more, should be transmitted direct to the President or First Vice-President of U. S. Steel Corporation. As soon as an appropriation is authorized, one copy will be returned to the President of the Company interested.

Appropriations involving an outlay of less than $10,000—excepting those for additional amounts as noted below—should be forwarded direct to the Comptroller.

All appropriation requests for additional amounts should be forwarded to the President or First Vice-President of U. S. Steel Corporation, excepting when the aggregate amount of the original and additional appropriations is less than $10,000, in which case they should be forwarded to the Comptroller.

Attention is particularly directed to General Letter of December 7, 1903, in regard to Construction and Improvement matters.

230 *Government's Exhibit U*

Withdrawn

This was a copy of the United States Steel Corporation's Annual Report to its stockholders year 1905.

231 *Government Exhibit V*

[File endorsement omitted.]

Amount expended for maintenance and operation	Year				
	1926	1927	1928	1929	1930
Maintenance of Way and Structures	$2,391,539.33	$2,493,010.81	$2,520,640.57	$2,650,967.58	$2,684,571.68
Maintenance of Equipment	5,432,469.51	5,138,646.92	4,947,031.14	4,337,457.95	3,613,327.93
Traffic	169,032.36	172,039.76	179,783.31	186,516.47	193,704.84
Transportation	8,671,933.35	8,579,920.83	8,458,959.21	9,256,579.40	8,427,443.19
General	614,605.39	640,866.45	725,288.20	677,476.92	666,379.74
Transportation for Investment—Cr.	4,210.57	24,176.77	11,642.03	12,765.51	11,951.93
	17,275,369.37	17,000,308.00	16,820,060.40	17,096,232.81	15,573,475.45
Add: Amount expended charged to Capital Account	546,316.94	435,470.51	357,204.34	1,348,177.82	1,910,755.74
	17,821,686.31	17,435,778.51	17,177,264.74	18,444,410.63	17,484,231.19
Less: Compensation to Employees	12,226,778.27	12,076,810.04	11,053,231.74	12,776,631.42	12,663,261.23
	5,594,908.04	5,358	,033.00	5,666,779.21	4,820,969.96

232 *Government Exhibit W*

[File endorsement omitted.]

Coal purchased from the U. S. Fuel Co.

Year	1926	1927	1928	1929	1930
January	$125,252.13	$147,091.79	$115,094.62	$122,694.49	$107,618.30
February	115,596.31	133,158.14	122,449.53	149,624.98	97,676.23
March	137,362.50	191,487.52	187,220.69	117,787.94	104,199.30
April	120,870.66	69,983.80	67,528.45	112,926.37	94,970.91
May	103,819.01	74,755.04	101,279.02	99,892.46	91,099.22
June	96,179.32	45,168.99	85,923.75	90,254.80	78,378.42
July	97,112.18	39,810.08	75,987.80	91,486.28	71,109.43
August	96,439.63	62,298.53	97,741.44	89,535.06	71,941.80
September	126,124.02	72,644.08	76,791.18	93,142.74	66,158.73
October	203,295.99	100,185.15	103,823.10	67,417.37	82,125.09
November	148,158.10	94,325.24	91,709.59	86,939.66	73,207.62
December	146,522.98	123,990.30	99,224.16	116,550.68	89,021.64
	1,516,732.83	1,154,898.66	1,224,273.33	1,238,252.72	1,027,808.69

233 *Government Exhibit X*

[File endorsement omitted.]

Lease

Chicago, Lake Shore & Eastern Railway Company to Elgin, Joliet & Eastern Railway Company

Dated June 1, 1909

This Memorandum of Agreement, Made and entered into this First day of June, A. D. 1909, by and between the Chicago, Lake Shore and Eastern Railway Company, a corporation duly organized and existing under and by virtue of the laws of the States of Illinois and Indiana, hereinafter for convenience designated "Chicago Company", party of the first part, and the Elgin, Joliet and Eastern Railway Company, a corporation duly organized and existing under and by virtue of the laws of the States of Illinois and Indiana, hereinafter for convenience designated "Elgin Company", party of the second part, Witnesseth:

First. That the Chicago Company, for and in consideration of the covenants and agreements of the Elgin Company hereinafter mentioned, has let, demised and leased, and by these presents does let, demise, and lease unto the Elgin Company, its successors or assigns, all and singular, the railroad of the said Chicago Company now or hereafter constructed, being a line of railroad extending from a point in South Chicago, in the City of Chicago, County of Cook and State of Illinois, to a point in the County of Lake, in the State of Indiana; also all extensions thereof, now or hereafter owned or acquired; also all branches thereof, now or hereafter owned or acquired; also all other lines of railroad owned by the said Chicago Company, whether in fee by lease or otherwise, and wheresoever situated, now or hereafter owned or acquired; also all yards and all side tracks, spur tracks or other tracks connected with or appurtenant to any of said lines of railroad or extensions or branches thereof, or any part of the same, now or hereafter owned or acquired, including all the railroad bed, rights-of-way, depot grounds, and all the lands used in connection with the operation of said railroad, extensions or branches thereof, all tracks, grading, bridges, viaducts, culverts, fences, and other structures, depots, station houses, engine houses, car houses, freight houses, wood houses, coal houses, machine shops, and other shops, and all other buildings and structures now owned or which may hereafter be erected, acquired or owned by said Chicago Company, its successors or assigns, or either of them, for use of or in connection with said railroad or extensions or branches or any part thereof, or with the business of the same, including also all rolling stock and equipment now owned by said

Chicago Company, being two (2) 4 wheel saddle tank engines; ten (10) 4 wheel switch engines; sixty-four (64) 6 wheel switch engines; five (5) 8 wheel switch engines; forty (40) consolidated engines; one hundred thirteen (113) flat cars; forty-eight (48) coal cars; forty-nine (49) wire cars; five (5) dirt cars; two hundred (200) wood side dump cars; fifty-five (55) wooden ore cars; two hundred ninety-six (296) steel ore cars; five hundred (500) wooden box cars; four hundred (400) wooden box cars with steel underframe; nine hundred sixty-eight (968) steel coke cars; three hundred seventy-seven (377) steel flat bottom gondola cars; one hundred twenty-two (122) steel hopper bottom gondola cars; twenty-five (25) steel low side pig iron cars; two thousand six hundred fifteen (2,615) structural steel side dump cars; ten (10) steel Summers dump cars; twenty (20) steel under-frame National Dump cars; one (1) steel double hopper center dump car; two thousand eight hundred ninety-nine (2,899) steel under-frame side dump cars; three hundred (300) steel under-frame flat cars; forty-nine (49) work cars; forty-four (44) cabooses, and one (1) steam crane; also all rolling stock and equipment of every kind hereafter owned or acquired, whether the same be hereafter constructed, purchased, or otherwise acquired by said Elgin Company for the purpose of replacing any such rolling stock or equipment aforesaid which may be damaged, worn out, destroyed, or sold, as hereinafter provided, or be hereafter constructed, purchased, or otherwise acquired by said Chicago Company for the purpose of adding to its rolling stock and equipment; and also all telegraphs and telephones, and all machinery, tools, implements, and material for constructing, maintaining, operating, repairing, and replacing said lines of railroad or extensions or branches thereof, or any part of the same, now owned or hereafter acquired; and also all rights, privileges, contracts, leases, operating and trackage rights, and all corporate and other franchises, except the right to be a corporation, ordinances, rights, privileges and immunities now owned, held, and enjoyed by or conferred upon said Chicago Company, or which may hereafter be owned by or conferred upon said Chicago Company, which are necessary or convenient to the full and complete use, operation, and enjoyment of the said above described lines of railroad, premises, and property; also all other property of every kind and nature and description wheresoever situated, now or hereafter held, owned, or possessed by said Chicago Company, whether in fee or by whatsoever right or title for use, either in constructing, maintaining, operating, repairing, replacing, or extending or in connection with the said lines of railroad or extensions or branches thereof, or any part of the same, for and during the term of sixty (60) years commencing on the First day of June, A. D. 1909, and ending on the Thirty-first day of May, A. D. 1969, with all the right of the Chicago Company to use and operate said railroad and appurtenances, also all its right to demand and receive fares, freight charges, tolls, or

other compensation for the transportation of persons or property and generally its full right and authority in and over the premises so far as the same may be necessary to enable the Elgin Company to possess, operate, enjoy, and preserve said railroad and appurtenances agreeably to the provisions of this lease, saving and excepting, however, and the said Chicago Company expressly hereby reserves to itself, the right to use all its railroad, property, rights, privileges, and franchises to the full extent necessary for it to properly perform and fulfill all the duties and functions which it as a public railroad and common carrier owes to the public and to the States of Illinois and Indiana, or may be required by law or competent public authority or authorities to perform, and subject, nevertheless, to the lien of that certain Deed of Trust and Mortgage of even date herewith from said Chicago Company to the New York Trust Company, upon said demised premises.

Second. The Elgin Company hereby covenants that it will operate said railroad continuously during the term of this lease and at all times furnish to the public reasonable facilities for the transportation of persons and property to the extent of the capacity of the tracks, siding, stations, and facilities of said Chicago Company; that it will at all times, during said term, keep, maintain and preserve said railroad premises and appurtenances and the additions and improvements that may hereafter be put thereon in all parts thereof in good condition and repair; that as often as any part or portion thereof, whether roadbed, rail, tie, bridge, culvert, turn-table, water-tank, station house, building or other parcel or appurtenance whatsoever, or locomotive, engine, tender, car and other rolling stock and equipment or machinery, tool, implement or material for constructing, operating, repairing or replacing the said railroad or any part thereof, shall from any cause whatsoever be destroyed or become unfit for their appropriate uses and purposes, said Elgin Company will, at its own proper cost, rebuild, repair, replace and renew the same, provided that the same when so rebuilt, repaired, replaced, or renewed and all other permanent structures and improvements when established shall become and be the property of the said Chicago Company to be thereafter rebuilt, repaired, replaced, and renewed by the Elgin Company as above provided; that it will perform the obligations of the several contracts of the said Chicago Company with other companies or individuals, as fully as the said Chicago Company might be required to do; that it will neither do nor omit to do any act whereby the corporate rights or franchises of said Chicago Company, or either of them, may become subject to forfeiture or impairment, and that it will indemnify and save harmless the said Chicago Company against all liability, actions, damages and losses which may in any manner arise from or on account of any act or omission by it, the said Elgin Company, its agents or employes, while this agreement shall be in force.

Said Elgin Company further agrees to keep and maintain at all times upon all the rolling stock covered by the terms of this lease

a proper plate or inscription showing the ownership of the same by the said Chicago Company.

Third. Said Elgin Company further agrees that it will unconditionally guarantee the principal and interest upon all the First Mortgage Gold Bonds of said Chicago Company, secured by that certain Deed of Trust and Mortgage to The New York Trust Company, Trustee, dated June 1, 1909, as the same may mature and fall due, and will from time to time, as said bonds may be issued, and whenever requested so to do by said Chicago Company, cause such guarantee to be endorsed upon each of said bonds by its President, or one of its Vice-Presidents, and cause its corporate seal to be affixed thereto, attested by its Secretary, or one of its Assistant Secretaries. The amount of said bonds issued at the date hereof is Nine Million Dollars ($9,000,000).

The Elgin Company further covenants and agrees to and with the Chicago Company and the Trustee (or its successor) in said Deed of Trust and Mortgage to perform and fulfill said guarantee of the principal and interest of all of said bonds without abatement, defense or claim of set-off, on account of any act, omission, or liability of the lessor to the lessee by reason of any breach or failure on the part of the lessor in the performance of any of the covenants of this agreement, or on account of any other matter or thing whatsoever, including the termination of this agreement as hereinafter provided.

Fourth. Said Elgin Company further agrees that it will, within thirty (30) days after the execution and delivery of this Indenture, pay or cause to be paid to said Chicago Company the sum of Four Million Dollars ($4,000,000).

It is, however, understood and agreed by and between the respective parties hereto that said sum of Four Million Dollars ($4,000,000) shall be held by said Chicago Company as security for the full and faithful performance by said Elgin Company of each and every, all and singular the terms, covenants, and conditions on its part to be done and performed under the terms of the within lease; and in the event that said Elgin Company shall fail so to do, then said Chicago Company may and shall, upon the termination of this lease in any way, deduct from such sum of Four Million Dollars ($4,000,000) a sufficient sum to fully reimburse it for or on account of any loss or damage it may sustain or suffer by reason of such failure and shall pay or cause to be paid to said Elgin Company the balance, if any, of said sum then remaining in its hands, otherwise all of said sum of Four Million Dollars ($4,000,000) shall, upon the termination of this lease in any way, be returned and repaid to said Elgin Company by said Chicago Company.

Said sum shall be by said Chicago Company kept intact during the term of this lease, or be by it invested in such notes, bonds, stock, or other securities as in its judgment it may deem best, said Chicago Company making good any and all loss it may sustain by or through any investment it may make of such sum, so that the full amount

thereof, or the balance of the same, as the case may be, shall be repaid to said Elgin Company in the manner and at the time as above provided. Said Chicago Company shall have the right to and may enjoy and use and appropriate to itself any and all income that may be derived from any such investment so made by it, as aforesaid, and shall not be required to account to said Elgin Company therefor.

Fifth. Said Elgin Company further agrees that it will pay or cause to be paid (1) to said Chicago Company an amount equivalent to the interest coupons attached to the First Mortgage Gold Bonds of said Chicago Company, from time to time outstanding, secured by that certain Deed of Trust and Mortgage to the New York Trust Company, Trustee, dated June 1, 1909, as they fall due semi-annually on the first days of December and June of each year, as long as said Deed of Trust and Mortgage is in force, and in like manner the coupons for interest at the same rate attached to new bonds secured by new mortgage, if hereafter issued in lieu of and in a sum not greater in amount than the amount of the bonds hereinabove referred to, which shall have been issued in conformity with the provisions hereof; (2) in due season all taxes and assessments which may be levied or become chargeable on the said demised railroad and property or upon the said Chicago Company, by reason of its ownership thereof, or upon the capital stock of said Chicago Company, and also to assume and pay all rentals and valid obligations of the Chicago Company under its leases, contracts, and agreements with other companies or individuals, now in force or hereafter entered into with the consent of said Elgin Company.

Sixth. It is further understood and agreed that after payment of the sums above mentioned the said Elgin Company may and shall, out of its earnings from time to time, growing out of the operation of its own property and the property hereby demised and leased, pay or cause to be paid the interest upon its First Mortgage Bonds from time to time outstanding, secured by that certain Deed of Trust and Mortgage to Central Trust Company of New York and John M. Butler, Trustees, dated April 1st, 1891, as the interest coupons attached thereto fall due semi-annually on the first days of May and November of each year as long as said Deed of Trust and Mortgage is in force, and in like manner the interest at the same rate upon new bonds secured by new mortgage if hereafter issued in lieu of and in a sum not greater in amount than the amount of the bonds hereinabove referred to which shall have been issued in conformity with the provisions hereof.

In the event that there shall be any surplus earnings of the Elgin Company on the first day of December in any year growing out of the operation by it of its own property and the property hereby demised and leased during such year, after payment of the sums herein in Section five mentioned to be paid, and after deducting interest upon said outstanding bonds of said Elgin Company above mentioned then accrued, and after deducting the necessary funds

for maintenance and depreciation, which shall be set aside for each party hereto separately, and to provide for the payment upon said date of a dividend at the rate of four per cent per annum upon the then outstanding capital stock of said Elgin Company, said Elgin Company shall make or cause to be made to said Chicago Company the following payments in the order named, to the extent that the amount of such surplus earnings will permit:

1st. On the first day of December, in the year 1909, Three Hundred Thousand Dollars ($300,000), and on the first day of December in each succeeding year thereafter the sum of Six Hundred Thousand Dollars ($600,000).

2nd. An amount equivalent to and not exceeding seven per cent per annum on the then outstanding capital stock of said Chicago Company.

3rd. Such proportionate part of the remainder of the surplus earnings for such year as twice the par value of the then outstanding capital stock of the Chicago Company bears to the sum of the par value of the then outstanding capital stock of the Elgin Company plus twice the par value of the then outstanding capital stock of the Chicago Company.

At the end of each three months after the date hereof an estimate shall be made of the amounts which have accrued to the said Chicago Company at the rates aforesaid for the previous three months and within thirty days after the date of such estimate the Elgin Company shall make payment on account to said Chicago Company of the amount which such estimate shows has accrued as aforesaid, provided that at the end of the year such adjustments, allowances, or payments shall be made between the parties as will result in the payment by the said Elgin Company to the said Chicago Company for such year of the amounts provided for herein, and no more.

It is also understood and agreed by and between the respective parties hereto that if said surplus earnings above mentioned shall not be sufficient at any time to pay the amounts agreed to be paid by said Elgin Company, to said Chicago Company, or any part thereof, in clause one of this section, then such sum, or the remainder of such sum, so unpaid shall be added to the sum to be paid under the terms of said clause one of this section in the succeeding year or years, and the whole amount thereof shall then in such succeeding year or years be paid before the sums provided for in clauses two and three of this section shall be paid.

It is also understood and agreed by and between the respective parties hereto that if such surplus earnings above mentioned shall not be sufficient to pay any of the sums herein in this section provided for, or shall not be sufficient to pay more than the sums provided for in clause one of this section, or in clauses one and two of this section, then and in that or either of such events the inability and failure of said Elgin Company to make any or either of such payments shall not constitute or be considered as a breach of this

agreement and shall not be grounds for the forfeiture or termination of the within lease.

Seventh. It is further understood and agreed that said Elgin Company may pay the coupons and interest warrants upon the said bonds of the said Chicago Company, mentioned in clause one (1) in Section five hereof, directly to the parties entitled thereto, in the manner specified therefor in the said Bonds and Deed of Trust and Mortgage securing the same, and shall thereupon cancel and deliver the same to the Chicago Company, and such payment and delivery so made by the said Elgin Company shall be an extinguishment of its duty or obligation to the same extent as if the payment of the amount provided for in clause one (1) of said Section five hereof had been made to the said Chicago Company.

Eighth. It is further understood and agreed that neither of the parties hereto shall increase the amount of its capital stock, or issue or cause to be issued any additional First Mortgage Gold Bonds, or First Mortgage Bonds, respectively, or create any other bonded indebtedness, without first obtaining the written consent thereto of the other party. It is also understood and agreed that the Chicago Company shall not construct any other railroad tracks, side tracks, switches, turnouts, improvements or appurtenances, or purchase or otherwise acquire any additional rolling stock or equipment than that named herein, without first obtaining the written consent thereto of the said Elgin Company.

Said Elgin Company may and shall have the right at its election to construct other railroad tracks, side tracks, switches, turnouts, improvements, and appurtenances upon the premises now or hereafter owned or acquired by the said Chicago Company, whether in fee by lease or otherwise, and also purchase or otherwise acquire additional rolling stock and equipment, and if the cost of said tracks, improvements, appurtenances, rolling stock, or equipment shall be refunded to said Elgin Company by said Chicago Company, then such tracks, improvements, appurtenances, rolling stock, or equipment shall become the property of said Chicago Company.

Said Chicago Company may make such payment of such cost with funds derived by and through the increasing of the amount of its capital stock, or the disposal of additional First Mortgage Gold Bonds, without the necessity of first obtaining the written consent of the said Elgin Company, as hereinabove provided, in which event said Elgin Company shall thereafter make the payments hereinbefore in Sections Five and Six provided for upon such additional bonds and such increased capital stock, as the case may be, in the same manner as in said sections provided.

In the event, however, that any such additional line of railroad is constructed, or other property of any kind or character whatsoever acquired, which shall become subject to the terms of this lease in the manner aforesaid, and be either constructed, purchased, or acquired by said Chicago Company, or by said Elgin Company, for

the cost of which it shall be reimbursed by said Chicago Company in the manner hereinbefore provided for, but with funds which are not derived by said Chicago Company by or through the sale or disposal of additional capital stock or of said First Mortgage Gold Bonds hereinbefore mentioned, then said Elgin Company shall thereupon and thereafter pay to said Chicago Company five per cent. (5%) interest semiannually on the first day of June and December in each year upon the cost to said Chicago Company of making such addition or acquiring such property. Said payment shall be made by said Elgin Company before any of the payments provided for in Section Six hereof shall be by it made.

Ninth. It is further understood and agreed that should said Elgin Company fail at any time to pay any or either of the sums of money which by the terms hereof it has covenanted and agreed to pay for the space of ninety (90) days after the same has become due and payable, or shall fail to maintain the said demised railroad and property in good condition and repair for the space of ninety (90) days or shall fail to comply with any other of the terms or conditions on its part to be done and performed for a period of ninety (90) days after the same should have been performed, all as herein provided, then in any or all of said cases of failure and default this lease may at the option of the said Chicago Company, its successors and assigns, after sixty (60) days' notice in writing from said Chicago Company to said Elgin Company of its intention in that regard, which said notice may be given at any time after such failure or default shall commence, be terminated, unless before the expiration of said sixty (60) days the said payment has been made or the said demised railroad and property restored to good condition and repair or said covenants and conditions performed; and it is further understood and agreed that should said Elgin Company fail at any time to operate the said demised railroad and property as in the Second Section hereof provided, for the space of ten (10) days, then this lease may at the option of the said Chicago Company, its successors and assigns, after ten (10) days' notice, in writing, from said Chicago Company to said Elgin Company, of its intention in that regard, which said notice may be given at any time after such failure shall commence, be terminated unless before the expiration of said ten (10) days the said Chicago Company shall resume the operation of said demised railroad and property effectually and in good faith.

In case said Chicago Company shall declare their lease terminated pursuant to the provisions hereof then the said Chicago Company, its successors, servants and agents may enter and possess themselves of all the property hereby leased and demised, provided, however, that the said entry and taking possession shall not in any way affect or determine the liability of the said Elgin Company under all and singular its covenants under this lease for all the obligations then accrued and acts theretofore done, nor shall such termination of this

lease or reentry or taking possession in any manner affect the liability of the said Elgin Company for the payment in full of all the sums which it has agreed to pay under the terms hereof which shall have accrued at the time of such termination of this lease.

Tenth. Said Chicago Company covenants and agrees that during the continuance of this lease it will preserve its corporate organization and will from time to time and in due time perform all acts which it is or may be by law in that behalf required to perform; and will neither do nor omit to do any act by which its corporate existence, rights and franchises, or either of them, may become subject to forfeiture or impairment; that said Elgin Company, its successors and assigns, shall have the exclusive and undisputed possession of said demised railroad and property with the right to control and operate said railroad, except as herein provided; and that it, the said Chicago Company, will, to the extent of its corporate power, make any and all further and other assurances, conveyances and contracts which may be advised by counsel to protect the said Elgin Company, its said successors and assigns, in such possession and in the exercise of such rights.

Eleventh. Said Elgin Company further covenants and agrees that it will not, during the continuance of this lease, without the consent in writing of said Chicago Company, change the location of any part of said line of railroad, but will maintain and preserve said line of railroad and all the plant, equipment and other property appurtenant thereto or included in this lease in good and proper repair and condition, and at the expiration of this lease, by default or otherwise, will return all the said railroad and property hereby demised to it to the said Chicago Company, its successors or assigns, in as good condition in every respect as when received hereunder, and will also at the same time so surrender to said Chicago Company the betterments or improvements which have been made or new branches which have been constructed or equipment which has been procured at the cost of said Chicago Company during the continuance of this lease under the provisions hereof or otherwise; and shall also at the same time pay over to said Chicago Company all funds set aside for depreciation and maintenance of the property of the said Chicago Company then unexpended.

Twelfth. The said Chicago Company hereby covenants and agrees that the said Elgin Company on performing and fulfilling all and singular the covenants and agreements herein contained on its part to be performed and fulfilled, shall and may peaceably and quietly have, hold, and enjoy the rights to use the railroad, property, rights, privileges and appurtenances herein described for and during the term aforesaid, without any let, interruption, hindrance, or molestation on the part of the said Chicago Company, or any other person or persons, corporation or corporations whatsoever, claiming or to claim by, through or under it, except as herein provided.

Thirteenth. In case any disagreement should arise between the parties hereto in reference to the proper construction of this Instru-

ment, or with reference to the rights, franchises, or obligations of either party hereunder, each party shall from time to time as may be necessary choose one person (disinterested between the parties) and the two persons so chosen shall choose a third, and said three persons shall on reasonable notice in writing to the parties herein determine any such matter or disagreement, and the parties hereto shall abide by and comply with any decision so made by said three persons or a majority of them. In case either party shall neglect or refuse to choose a person to act as aforesaid after twenty (20) days' notice in writing from the other party to make such choice, the party giving such notice may choose two disinterested persons and the two so chosen shall choose a third to act with them and the three so chosen or a majority of them shall proceed to determine the matter in dispute in like manner and with like power and effect as if chosen as first above provided.

Fourteenth. It is further understood and agreed by and between the respective parties hereto that all the covenants, agreements and stipulations herein contained shall be binding upon and inure to the benefit of the parties hereto respectively, and their respective successors and assigns.

In Witness Whereof, the parties hereto have caused these presents to be executed by their respective Presidents, and their respective corporate seals to be hereunto affixed, attested by their respective Secretaries, the day and year first above written.

CHICAGO, LAKE SHORE AND EASTERN
RAILWAY COMPANY,
By A. F. BANKS, *President.*

Attest:
[SEAL] W. K. ALLEN,
Secretary.

ELGIN, JOLIET AND EASTERN,
RAILWAY COMPANY,
By A. F. BANKS, *President.*

Attest:
[SEAL] W. K. ALLEN,
Secretary.

STATE OF ILLINOIS,
County of Cook, ss:

I, Ruth G. Hurd, a Notary Public in and for the County and State aforesaid, do hereby certify that A. F. Banks, President, and W. K. Allen, Secretary, of the Chicago, Lake Shore and Eastern Railway Company, who are personally known to me to be the same persons whose names are subscribed to the foregoing Instrument as such President and Secretary, appeared before me this day in person, and acknowledged that they signed, sealed and delivered the said Instrument of Writing as their free and voluntary act and as the free and voluntary act of the said Railway Company for the uses and

purposes therein set forth, and caused the corporate seal of said Company to be thereto attached.

Given under my hand and Notarial Seal, this 19th day of July, A. D. 1909.

[SEAL] RUTH G. HURD,
Notary Public.

STATE OF ILLINOIS,
County of Cook, ss:

I, Ruth G. Hurd, a Notary Public in and for the County and State aforesaid, do hereby certify that A. F. Banks, President, and W. K. Allen, Secretary, of the Elgin, Joliet and Eastern Railway Company, who are personally known to me to be the same persons whose names are subscribed to the foregoing Instrument as such President and Secretary, appeared before me this day in person, and acknowledged that they signed, sealed and delivered the said Instrument of Writing as their free and voluntary act and as the free and voluntary act of the said Railway Company for the uses and purposes therein set forth, and caused the corporate seal of said Company to be thereto attached.

Given under my hand and Notarial Seal, this 19th day of July, A. D. 1909.

[SEAL] RUTH G. HURD.
Notary Public.

234 *Government Exhibit X*

[File endorsement omitted.]

Supplemental Lease

Chicago, Lake Shore & Eastern Railway Company to Elgin, Joliet & Eastern Railway Company

Dated June 1, 1909

Supplemental agreement, Made and entered into the First day of June, A. D. 1909, by and between the Chicago, Lake Shore and Eastern Railway Company, hereinafter for convenience designated the "Chicago Company", party of the first part, and the Elgin, Joliet and Eastern Railway Company, hereinafter for convenience designated the "Elgin Company", part of the second part, Witnesseth:

That Whereas, the parties hereto did enter into a certain agreement bearing even date herewith: . .

Now, Therefore, as a part of said agreement and in explanation and interpretation of its true intent and meaning, it is hereby mutually covenanted and agreed that the obligation of the Elgin Company to pay to the Chicago Company, as provided in the second clause of the Sixth Section, shall be cumulative; that is to say, that

if the surplus earnings for any year, mentioned in said Section Sixth, shall not be sufficient to pay an amount equivalent to seven percent (7%) per annum on the then outstanding capital stock of the said Chicago Company at any time as in said second clause of said Section Sixth provided, after deducting the amounts which shall first be deducted and paid, as in the preceding clauses of said Section Sixth provided, then the remainder so unpaid shall be added to the sum to be paid under the terms of said clause two of Section Sixth in the succeeding year or years, and the whole amount thereof shall then in such succeeding year or years be paid before any part of such surplus shall be divided between the parties hereto, as provided in the third clause of said Section Sixth.

In Witness Whereof, the parties hereto have caused these presents to be executed by their respective Presidents, and their respective corporate seals to be hereunto affixed, attested by their respective Secretaries, the day and year first above written.

CHICAGO, LAKE SHORE AND EASTERN RAILWAY COMPANY.
By A. F. BANKS, *President.*

ATTEST:
W. K. ALLEN, *Secretary.*

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY.
By A. F. BANKS, *President.*

ATTEST:
W. K. ALLEN, *Secretary.*

235 *Government X 3*

Amendment to Lease of June 1, 1909

Chicago, Lake Shore & Eastern Railway Company to Elgin, Joliet & Eastern Railway Company

[File endorsement omitted.]

Dated December 1, 1913

This agreement, made and entered into this first day of December, A. D., 1913, by and between the Chicago, Lake Shore & Eastern Railway Company, hereinafter for convenience designated the "Chicago Company", party of the first part, and the Elgin, Joliet & Eastern Railway Company, hereinafter for convenience designated the "Elgin Company", party of the second part, witnesseth:

That, whereas, the parties hereto did enter into a certain agreement or lease bearing date the first day of June, A. D. 1909, and did also enter into a supplemental agreement bearing date the first day of June, A. D. 1909; and,

Whereas, it is mutually desired by the parties hereto to modify and amend certain terms and conditions set forth in said agreement or lease above mentioned, and to cancel the said supplemental agreement above mentioned;

Now, therefore, in consideration of the sum of One Dollar, from each to the other in hand paid, the receipt whereof is hereby acknowledged, and in further consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable considerations, it is covenanted and agreed by and between the respective parties hereto, as follows:

First. That Section Second of said agreement or lease above mentioned be, and the same is hereby, amended by striking out each and every part thereof and inserting in lieu thereof the following:

"Second. The Elgin Company hereby covenants that it will operate said railroad continuously during the term of this lease and at all times furnish to the public reasonable facilities for the transportation of persons and property to the extent of the capacity of the tracks, sidings, stations, and facilities of said Chicago Company; that it will at all times, during said term, keep, maintain, and preserve said railroad premises and appurtenances and the additions and improvements that may hereafter be put thereon in all parts thereof in good condition and repair; that as often as any part or portion thereof, whether roadbed, rail, tie, bridge, culvert, turntable, water-tank, station house, building, or other parcel or appurtenance whatsoever, or locomotive, engine, tender, car, and other rolling stock and equipment, or machinery, tool, implement, or material for constructing, operating, repairing, or replacing the said railroad or any part thereof, shall from any cause whatsover be destroyed or become unfit for their appropriate uses and purposes, said Elgin Company will, at its own proper cost, rebuild, repair, replace, and renew the same, provided that the same when so rebuilt, repaired, replaced, or renewed, and all other permanent structures and improvements when established shall become, and be the property of the said Chicago Company to be thereafter rebuilt, repaired, replaced, and renewed by the Elgin Company as above provided; that it will pay and satisfy in due season all taxes and assessments, other than taxes upon net income, which may be levied or become chargeable on the said demised railroad and property, or upon the said Chicago Company, by reason of its ownership thereof, or upon the capital stock of the said Chicago Company; that it will assume and pay all rentals and assume, pay, and perform all valid obligations of the Chicago Company under its leases, contracts, and agreements with other companies or individuals, now in force or hereafter entered into with the consent of the Elgin Company, which during the term of this lease are chargeable to, or pertain to, the maintenance and operation of the railroad and property hereby demised; that it will neither do nor omit to do any act whereby the corporate rights or franchises of said Chicago Company, or either

of them, may become subject to forfeiture or impairment, and that it will indemnify and save harmless the said Chicago Company against all liability, actions, damages, and losses which may in any manner arise from or on account of any act or omission by it, the said Elgin Company, its agents or employes, while this agreement shall be in force.

"Said Elgin Company further agrees to keep and maintain at all times upon all the rolling stock covered by the terms of this lease a proper plate or inscription showing the ownership of the same by the Chicago Company."

Second. That Section Fifth of said agreement or lease above mentioned be, and the same is hereby, amended by striking out each and every part thereof and inserting in lieu thereof the following:

"Fifth. Said Elgin Company further agrees that it will pay, or cause to be paid, to the said Chicago Company as part of the annual rental to be paid by it for the railroad and property hereby demised and leased, the several amounts hereinafter in this section mentioned, namely:

"(1) An amount equivalent to the interest coupons attached to the First Mortgage Gold Bonds of said Chicago Company, from time to time outstanding, secured by that certain Deed of Trust and Mortgage to the New York Trust Company, Trustee, dated June 1, 1909, as they fall due semi-annually on the first days of December and June of each year, as long as said Deed of Trust and Mortgage is in force, including interest coupons on bonds secured by said Deed of Trust and Mortgage issued in accordance with Section Eighth hereof, to cover the cost in whole or in part of additions or betterments to property or equipment of the said Chicago Company; and in like manner an amount equivalent to the interest, as the same may accrue and become due and payable (but at a rate not to exceed five percent per annum), upon any new bonds secured by new mortgage or mortgages, which may hereafter be issued either in payment or satisfaction of the said First Mortgage Gold Bonds, or to provide funds to pay or satisfy the same, provided, however, that the principal amount of such new bonds, the interest upon which shall measure an amount of rental to be paid as provided in this paragraph, shall not exceed the aggregate principal amount of the said First Mortgage Gold Bonds which shall have been issued in conformity with the provisions hereof.

"(2) An amount equivalent to the interest, as the same may accrue and become due and payable, on any bonded or other interest bearing debt other than that in paragraph (1) of this Section Fifth mentioned, which may be issued in accordance with Section Eighth hereof by the said Chicago Company to cover the cost in whole or in part of any additions or betterments to its property or equipment:

"(3) An amount equal to five per cent per annum upon any moneys expended by said Chicago Company in accordance with the provi-

sions of Section Eighth hereof, to cover the cost in whole or in part of any additions or betterments made subsequent to June 1, 1909, to the property or equipment of the said Chicago Company, for which the said Chicago Company shall not have incurred an interest bearing indebtedness, or for which the said Chicago Company shall not have been reimbursed through the issuance and sale of capital stock or bonds in accordance with Section Eighth hereof."

Third. That Section Sixth of said agreement or lease above mentioned, be, and the same is hereby, amended by striking out each and every part thereof, and inserting in lieu thereof the following:

"Sixth. It is further understood and agreed that if after the payment of the sums to be paid by the Elgin Company to the Chicago Company for rentals as provided in Section Fifth hereof, there shall be and remain surplus net earnings accruing to the Elgin Company for any year ending December 1st, growing out of the operation of its own property and the property hereby demised and leased, the said Elgin Company shall make or cause to be made to the Chicago Company the following payments as additional rentals in the order named and to the extent that the amount of such surplus net earnings will permit, viz:

"1st. An amount equivalent to but not exceeding seven per cent per annum on the then outstanding capital stock of the Chicago Company.

"2nd. The sum of two hundred and fifty thousand dollars ($250,000.00) per annum.

"3rd. Such proportionate part of the remainder of the surplus net earnings for such year as twice the par value of the then outstanding capital stock of the Chicago Company bears to the sum of the par value of the then outstanding capital stock of the Elgin Company plus twice the par value of the then outstanding stock of the Chicago Company.

"In order to avoid any possible dispute between the parties hereto, it is specifically understood and agreed that in arriving at the surplus net earnings of the Elgin Company available for the payment of the additional amounts of rentals as hereinbefore in this section provided, the folowing deductions shall be made from the gross revenue and income in the order named:

"(a) All expenses paid or incurred, and proper charges to be made, for operation, maintenance, and depreciation.

"(b) The amount of rentals herein in Section Fifth mentioned to be paid.

"(c) An amount equivalent to the interest as the same may accrue during the year upon the First Mortgage Bonds of said Elgin Company, from time to time outstanding, secured by that certain Deed of Trust and Mortgage to Central Trust Company of New York and John M. Butler, Trustees, dated April 1, 1891, as long as said Deed of Trust and Mortgage is in force; and in like manner an amount equivalent to the interest, as the same may accrue during the year

(but at a rate not to exceed five per cent per annum) upon any new bonds, secured by mortgage, or mortgages, which may hereafter be issued either in payment or satisfaction of the said First Mortgage Bonds of the Elgin Company, or to provide funds to pay or satisfy the same, provided, however, that the principal amount of such new bonds, the interest upon which shall measure the amount of deduction to be made as provided in this paragraph, shall not exceed the aggregate principal amount of said First Mortgage Bonds now issued and outstanding.

"(d) An amount equivalent to the interest as the same may accrue during the year upon any other bonds or interest-bearing debt of the said Elgin Company issued in accordance with the provisions of Section Eighth hereof.

"(e) An amount equivalent to five per cent (5%) per annum upon any moneys expended by the said Elgin Company subsequent to June 1, 1909, to cover the cost in whole or in part, of any additions or betterments to the property or equipment of the said Elgin Company, for which the said Elgin Company shall not have incurred any interest-bearing indebtedness or for which the said Elgin Company shall not have been reimbursed through the issuance and sale of capital stock or bonds in accordance with Section Eighth hereof.

"(f) An amount equivalent to four per cent (4%) per annum upon the then outstanding capital stock of the said Elgin Company.

"It is also understood and agreed by and between the respective parties hereto that in computing "surplus net earnings," as hereinbefore referred to, there shall not be included any receipts accruing to, or charges arising against the Elgin Company, other than those coming from or arising through the operation or use of the railroad property, equipment and appurtenances controlled through ownership or lease by the parties hereto; and no deduction shall be made for taxes assessed on income, such taxes to be paid by each party for its own account. Charges for tracks and other property abandoned shall, however, be included in making the computation aforesaid even if not charged to operating expenses. But in making such computation there shall be included provisional charges against gross revenue or income, for allowances for depreciation of equipment owned by each party, and for depreciation of other property, in amounts as prescribed by the accounting regulations of the Interstate Commerce Commission or otherwise agreed to by the Chief Accounting Officers of both parties; and any amounts so charged and set aside for account of the property of each party shall be separately recorded by said Elgin Company in its books of account and the amount thus received for account of the property of the Chicago Company shall be held by such Elgin Company as a trust fund to be used by it for renewing and replacing, when required, the property of the Chicago Company on account of which such reservation is made; and property so constructed or acquired in replacement with such funds shall become the property of the Chicago Company.

In the event, however, it is deemed inadvisable by the parties hereto to replace or renew any equipment or property of the Chicago Company which may become worn out, obsolete or abandoned, then the Elgin Company shall forthwith pay over in cash to the Chicago Company the amount of depreciation fund reserves held in its hands which have accrued or arisen through charges made for depreciation or have been received by it from the sale, disposal or application to other uses of the said property.

"It is further understood and agreed by and between the respective parties hereto that if the net earnings above mentioned shall not within any year ending December 1st be sufficient to equal the amounts of rentals specified in Section Fifth hereof and the amounts of deductions and rentals specified in this Section Sixth, (except those mentioned in the preceding paragraphs of this Section Sixth, numbered "2nd" and "3rd",) then any such specified sums, or the remainder of any such sum, thus not provided for or covered by the net earnings shall be added to the sums to be reserved or paid in or under such respective sections or paragraphs in the succeeding year or years, and the whole amount thereof shall then in such succeeding year or years (when the net earnings may be sufficient to pay or meet the same in addition to similar accruals for the current year) be paid or reserved before the rentals provided for in Paragraphs numbered "2nd" and "3rd", of this Section Sixth, shall be paid, the intention being that all amounts reserved for the Elgin Company and all rentals to be paid as hereinbefore specified in Section Fifth hereof and in this Section Sixth, shall be cumulative in the order in which they appear, except, however, as to the rental payments specified in said paragraphs numbered "2nd" and "3rd" of this Section Sixth, which shall not be cumulative.

"It is also understood and agreed by and between the respective parties hereto that if such net earnings above mentioned shall not, after making reservations or deductions therefrom of the amounts specified in Section Fifth hereof and in paragraphs (a), (b), (c), (d), (e), and (f) of this Section Sixth be sufficient to pay any of the rental amounts herein in paragraphs (1st), (2nd), and (3rd) of this Section Sixth provided for, or shall not be sufficient to pay more than the amounts provided for in paragraph numbered 1st of this Section Sixth, or in paragraphs numbered 1st and 2nd of this Section Sixth, then and in that or either of such events, the inability and failure of said Elgin Company to make any or either of such payments, provided for in said Paragraphs (1st), (2nd), or (3rd) of this Section Sixth, shall not constitute or be considered as a breach of this agreement, and shall not be grounds for the forfeiture or termination of the within lease.

"It is also further understood and agreed by and between the respective parties hereto that the amount of expenditures for addition or betterments made subsequent to June 1, 1909, to the property or equipment of the Chicago Company, upon which rental of

five per cent per annum on said amount is to be paid, as provided in paragraph (3) of amended Article Fifth, also that the amount of expenditures subsequent to June 1, 1909, for additions or betterments to the property or equipment of the Elgin Company, upon which an allowance of five per cent per annum shall be calculated, as provided in paragraph (e) of amended Article Sixth, shall in each case be the total amount of expenditures thus made by the respective companies, less the credits arising since June 1, 1909, and made to the respective property investment accounts, for property or equipment sold, abandoned, or otherwise disposed of.

"As of June 1st of each year, after the 31st day of December, 1913, an estimate shall be made of the amount of rentals which have accrued during the preceding six months to the said Chicago Company under the provisions of this agreement, except as to the items of rental covered by Paragraphs numbered '2nd' and '3rd' in this Section Sixth, and payment shall be made on or before the 30th day of June in such year, on account to said Chicago Company of the amount of rental which such estimate shows has accrued; and as of December 1st, of each year after said 31st day of December 1913, calculation shall be made of the precise amount due for rentals for the year ending November 30th, next preceding, under the terms and provisions of this lease, and the amount so found to be due and payable, less the amount paid on account on the preceding June 30th, as above provided, shall be paid by the said Elgin Company to the said Chicago Company, on or before the 31st day of December in such year."

Fourth. That Section Eighth of said agreement or lease above mentioned be, and the same is hereby, amended by striking out each and every part thereof and inserting in lieu thereof the following:

"Eighth. It is further understood and agreed that neither of the parties hereto shall increase the amount of its capital stock, or issue or cause to be issued any additional First Mortgage Gold Bonds, or First Mortgage Bonds, respectively, or create any other bonded indebtedness, without first obtaining the written consent thereto of the other party. It is also understood and agreed that the Chicago Company shall not construct any other railroad tracks, side tracks, switches, turnouts, improvements or appurtenances, or purchase or otherwise acquire any additional rolling stock or equipment than that named herein, without first obtaining the written consent thereto of the said Elgin Company.

"Said Elgin Company may and shall have the right at its election to construct other railroad tracks, side tracks, switches, turnouts, improvements and appurtenances upon the premises now or hereafter owned or acquired by the said Chicago Company, whether in fee, by lease or otherwise, and also purchase or otherwise acquire additional rolling stock and equipment, and if the cost of said tracks, improvements, appurtenances, rolling stock or equipment shall be

refunded to said Elgin Company by said Chicago Company, then such tracks, improvements, appurtenances, rolling stock or equipment shall become the property of said Chicago Company.

"Said Chicago Company may make such payment of such cost with funds derived by and through the increasing of the amount of its capital stock, or the disposal of additional First Mortgage Gold Bonds, without the necessity of first obtaining the written consent of the said Elgin Company, as hereinabove provided, in which event said Elgin Company shall thereafter make the payments hereinbefore in Sections Fifth and Sixth provided for upon such additional bonds and such increased capital stock, as the case may be, in the same manner as in said sections provided.

"In the event, however, that any such additional line of railroad is constructed, or other property of any kind or character whatsoever acquired, which shall become subject to the terms of this lease in the manner aforesaid, and be either constructed, purchased or acquired by said Chicago Company, or by said Elgin Company, for the cost of which it shall be reimbursed by said Chicago Company in the manner hereinbefore provided for, but in whole or in part with funds which are not derived by said Chicago Company by or through the sale or disposal of additional capital stock or of said First Mortgage Gold Bonds hereinbefore mentioned, then said Elgin Company shall thereupon and thereafter make the payments hereinbefore in paragraphs '2nd' and '3rd' of Section Fifth provided for, on account of the whole or part of such funds not derived as aforesaid, as the case may be."

Fifth. That said supplemental agreement dated the first day of June, A. D. 1909, above mentioned be, and the same is hereby, terminated, cancelled, and annulled.

In witness whereof, the parties hereto have caused these presents to be executed by their respective Presidents, and their respective corporate seals to be hereunto affixed, attested by their respective Secretaries, the day and year first above written.

CHICAGO, LAKE SHORE & EASTERN RAILWAY COMPANY,

President.

ATTEST:

Secretary.

ELGIN, JOLIET & EASTERN RAILWAY COMPANY,

President.

ATTEST:

Secretary.

236 *Government Exhibit X–3*

Amendment to Lease of June 1st, 1909 (as Amended December 1st, 1913)

Chicago, Lake Shore & Eastern Railway Company to Elgin, Joliet & Eastern Railway Company

Dated December 21st, 1917

[File endorsement omitted.]

This Agreement, Made and entered into this twenty-first day of December, A. D. 1917; by and between the Chicago, Lake Shore & Eastern Railway Company (hereinafter for convenience designated the "Chicago Company"), party of the first part, and the Elgin, Joliet & Eastern Railway Company (hereinafter for convenience designated the "Elgin Company"), party of the second part, Witnesseth:

That, whereas, the parties hereto did enter into a certain agreement or lease bearing date the First day of June, A. D. 1909, and did also enter into a supplemental agreement bearing date the First day of June, A. D. 1909; and,

Whereas, the parties hereto did enter into a certain agreement bearing date the First day of December, A. D. 1913, modifying and amending certain terms and conditions set forth in said agreement or lease above mentioned, and cancelling the said supplemental agreement above mentioned; and,

Whereas, during the term of said lease so amended as aforesaid said Elgin Company has made and set up separately in its books of account certain allowances for depreciation of equipment owned by the Chicago Company, all as provided for in Section Sixth of said lease so amended as aforesaid; and,

Whereas, it is mutually desired by the parties hereto to modify and amend said lease so amended as aforesaid as hereinafter provided;

Now, therefore, in consideration of the sum of One Dollar, from each to the other in hand paid, the receipt whereof is hereby acknowledged, and in further consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable considerations, it is covenanted and agreed by and between the respective parties hereto, that said agreement or lease so amended as aforesaid be further amended and modified as hereinafter provided:

1. The Second Section of said agreement or lease above mentioned as amended as aforesaid shall be, and the same is hereby further amended so that the same shall read as follows:

"Second. The Elgin Company hereby covenants and agrees that it will operate said railroad continuously during the term of this lease and at all times furnish to the public reasonable facilities for

the transportation of persons and property to the extent of the capacity of the tracks, sidings, stations, and facilities of said Chicago Company; that it will at all times, during said term, keep, maintain, and preserve said railroad premises and appurtenances and the additions and improvements that now are or hereafter may be put thereon in all parts thereof in good condition and repair; that as often as any part or portion thereof, whether roadbed, rail, tie, bridge, culvert, turn-table, water-tank, station house, building, or other parcel or appurtenance whatsoever, or locomotive, engine, tender, car, or other rolling stock and equipment, or machinery, tool, implement, or material for constructing, operating, repairing, or replacing the said railroad or any part thereof, shall from any cause whatsoever be destroyed or become unfit for their appropriate uses and purposes, said Elgin Company will, except as herein otherwise provided, at its own proper cost, rebuild, repair, replace, and renew the same, provided that the same when so rebuilt, repaired, replaced, or renewed and all other permanent structures and improvements when constructed shall become and be the property of the said Chicago Company to be thereafter rebuilt, repaired, replaced, and renewed by the Elgin Company, as above provided.

"If any locomotive, engine, tender, car, or other item of rolling stock or equipment shall from any cause whatever be destroyed or become unfit for its appropriate use and purpose, said Elgin Company shall at its election either rebuild, repair, replace, renew, or retire the same.

"If any such locomotive, engine, tender, car, or other item of rolling stock or equipment be rebuilt, repaired, replaced, or renewed the Chicago Company shall pay to the Elgin Company the sum accumulated by it in its Depreciation Fund prior to June 1, 1909, and also the sum accumulated by it in its Depreciation Fund from and after January 1, 1917, and which sums are applicable to the rebuilding, repairing, replacing, or renewing of such locomotive, engine, tender, car, or other item of rolling stock or equipment. The remainder of such cost shall be paid out of the Fund in Section Sixth (A) hereof mentioned and otherwise by the Elgin Company.

"If any locomotive, engine, tender, car, or other item of rolling stock or equipment be retired, either because destroyed or disposed of, the Elgin Company shall pay, out of the Fund in Section Sixth (A) hereof mentioned and otherwise, to the Chicago Company the original cost of such locomotive, engine, tender, car, or other item of rolling stock or equipment, less the amounts accumulated by the Chicago Company in its Depreciation Fund or Funds, applicable to such locomotive, engine, tender, car, or other item of rolling stock or equipment.

"The Elgin Company further covenants and agrees that it will pay and satisfy in due season all taxes and assessments, which may be levied or become chargeable on the said demised railroad and property or upon the said Chicago Company by reason of its ownership thereof, except taxes upon net income and upon the capital stock

and surplus of the said Chicago Company; that it will assume and pay all rentals and assume, pay, and perform all valid obligations of the Chicago Company under its leases, contracts, and agreements with other companies or individuals, now in force or hereafter entered into with the consent of the Elgin Company, which during the term of this lease are chargeable to, or pertain to, the maintenance and operation of the railroad and property hereby demised; that it will neither do nor omit to do any act whereby the corporate rights or franchises of said Chicago Company, or either of them, may become subject to forfeiture or impairment, and that it will indemnify and save harmless the said Chicago Company against all liability, actions, damages, and losses which may in any manner arise from or on account of any act or omission by it, the said Elgin Company, its agents, or employes, while this agreement shall be in force.

"Said Elgin Company further agrees to keep and maintain at all times upon all the rolling stock covered by the terms of this lease a proper plate or inscription showing the ownership of the same by the Chicago Company."

2. The Fifth Section of said agreement or lease above mentioned as amended as aforesaid shall be, and the same is hereby further amended by adding to the end thereof a new subdivision as follows:

"(4) The Chicago Company shall, in the year 1917, and in each year thereafter, set aside in a Depreciation Fund a proper amount to represent the depreciation for the year 1917, and subsequent years, on the locomotives, engines, tenders, cars, and other rolling stock and equipment hereby demised. The Elgin Company shall, in the year 1917, and in each year thereafter, pay to the said Chicago Company, as part of the compensation or rental aforesaid, a sum equal to the amount so to be set aside by said Chicago Company. The amount of such fund shall be governed by the rules and regulations of the Interstate Commerce Commission, so far as applicable. If the parties hereto cannot agree as to the amount which is a proper amount to be set aside in such Depreciation Fund, such sum shall be determined by arbitrators under the provisions for arbitration herein set forth."

3. The Sixth Section of said agreement or lease above mentioned as amended as aforesaid shall be, and the same is hereby further amended as follows:

Subdivision (a) of said Section Sixth shall be, and the same is hereby amended so as to read as follows:

"(a) All expenses paid or incurred, and proper charges to be made, for operation and maintenance of the properties of both parties, and for depreciation of the equipment owned by the Elgin Company."

The first two paragraphs of subdivision (f) of said Section Sixth shall be, and the same are hereby amended so as to read as follows:

"(f) An amount equivalent to four per cent (4%) per annum upon the then outstanding capital stock of the said Elgin Company.

"It is also understood and agreed by and between the respective parties hereto that in computing 'surplus net earnings,' as hereinbefore referred to, there shall not be included any receipts accruing to, or charges arising against the Elgin Company, other than those coming from or arising through the operation or use of the railroad property, equipment, and appurtenances controlled through ownership or lease by the parties hereto; and no deduction shall be made for taxes assessed on income, capital stock or surplus, such taxes to be paid by each party for its own account. Charges for tracks and other property abandoned shall, however, be included in making the computation aforesaid even if not charged to operating expenses. But in making such computation there shall be included provisional charges against gross revenue or income, for allowances for depreciation of equipment owned by said Elgin Company, and for depreciation of other property owned by said Elgin Company, in amounts as prescribed by the accounting regulations of the Interstate Commerce Commission or otherwise agreed to by the Chief Accounting Officers of both parties."

4. A new section shall be added to and included in said agreement or lease above mentioned as amended to follow Section Sixth in said lease as amended and to be known as "Sixth (A)", which said new section shall read as follows:

"Sixth (A). By the terms of said lease of June 1, 1909, as amended, the Elgin Company agreed to rebuild, repair, replace, and renew at its own proper cost all locomotives, engines, tenders, cars, and other rolling stock and equipment of the Chicago Company covered by said lease and pursuant to such obligation has set aside in a Depreciation Fund certain sums for that purpose. The said Elgin Company shall upon the execution hereof pay to the Chicago Company the amount so set aside in such Depreciation Fund during the year 1917, as part of the compensation or rental to be paid by the said Elgin Company for the property hereby demised. The said Elgin Company shall be under no further obligation to set aside in such Depreciation Fund any amounts for the purpose aforesaid, but the said Chicago Company shall set aside in a Depreciation Fund proper amounts for such purpose as provided in subdivision (4) in Section Fifth hereof.

"It is further covenanted and agreed that said Elgin Company shall hold the sums now remaining and from time to time remaining in said Depreciation Fund as a trust fund for the benefit of the said Chicago Company. As often as any locomotive, engine, tender, car, or other item of rolling stock or equipment of the Chicago Company is rebuilt, repaired, replaced, or renewed, the said Elgin Company shall apply the amount in such fund which is applicable to such rebuilding, repairing, replacing, or renewing of such locomotive, engine, tender, car, or other item of rolling stock or equipment toward the cost thereof. If any locomotive, engine, tender, car, or other item of rolling stock or equipment be retired, the Elgin

Company shall pay to said Chicago Company, in part performance of its obligation in such case under Section Second hereof the amount in such Depreciation Fund which is applicable to such locomotive, engine, tender, car, or other item of rolling stock or equipment. Said Elgin Company shall upon the termination of this lease, by default or otherwise, pay over to the said Chicago Company the amount of said trust fund so held by it as herein set forth then remaining in its hands.

"It is also understood and agreed that the amounts in said Depreciation Fund from time to time may be by said Elgin Company invested in such notes, bonds, stocks, or other security or property as in its judgment may be deemed best, said Elgin Company making good any and all loss which it may sustain by or through any investment it may make of such sum so that the full amount thereof or the balance of the same, as the case may be, shall be applied as above provided or repaid to said Chicago Company as above provided.

"Said Elgin Company shall have the right to and may enjoy and use and appropriate to itself any and all income that may be derived from such investment so made by it as aforesaid and shall not be required to account to said Chicago Company therefor.

"Upon the performance by the said Elgin Company of the agreements by it to be performed, as provided in this section, the said Elgin Company shall be relieved of its obligation to return, upon the termination of said agreement or lease above mentioned as amended, the locomotives, engines, tenders, cars, and other rolling stock and equipment received by it under the said agreement or lease above mentioned as amended, in as good condition in every respect as when received under said agreement or lease above mentioned, and shall only be obligated to return the said locomotives, engines, tenders, cars, and other rolling stock and equipment in the condition in which the same shall have been maintained by the said Elgin Company, in accordance with the terms of this agreement or lease."

In witness whereof, the parties hereto have caused these presents to be executed by their respective Presidents, and their respective corporate seals to be hereunto affixed, attested by their respective Secretaries, the day and year first above written.

CHICAGO, LAKE SHORE & EASTERN RAILWAY COMPANY,

[SEAL] By A. F. BANKS, *President.*

ATTEST:

F. L. KOONTZ, *Secretary.*

ELGIN, JOLIET & EASTERN RAILWAY COMPANY,

[SEAL] By A. F. BANKS, *President.*

ATTEST:

F. L. KOONTZ, *Secretary.*

237 *Government Exhibit Y*

Trackage Agreement

Chicago and Eastern Illinois Railroad Company With Chicago, Lake Shore and Eastern Railway Company

Dated February 1, 1909

Expires January 31, 1959

An agreement made and entered into this 1st day of February 1909, by and between Chicago and Eastern Illinois Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of Illinois (hereinafter called the Eastern Illinois Company), party of the first part, and Chicago, Lake Shore and Eastern Railway Company, a corporation organized and existing under and by virtue of the laws of the States of Illinois and Indiana (hereinafter called the Lake Shore Company), party of the second part.

Whereas, the Eastern Illinois Company, as owner, lessee, or otherwise, now operates sundry lines of railroad in the States of Illinois and Indiana; and

Whereas, the Lake Shore Company, as owner, lessee, or otherwise, operates sundry lines of railroad in the States of Illinois and Indiana, and, by way of other railroads over which the Lake Shore Company has trackage rights, its said operated lines are connected with the railroad of the Eastern Illinois Company; and

Whereas, the Lake Shore Company desires to obtain the right to operate its engines, trains, and cars over said lines of railroad operated by the Eastern Illinois Company; and

Whereas, it is believed by the parties hereto that an arrangement permitting and providing for the matters and things herein set forth will be advantageous to each of the parties hereto,

Now, therefore, this agreement witnesseth: That in consideration of the premises and of the sum of One Dollar, lawful money of the United States, by the Lake Shore Company paid to the Eastern Illinois Company, the receipt whereof is hereby acknowledged, and in further consideration of the benefits hereby secured to each of said parties and of the mutual covenants and agreements herein contained, the Eastern Illinois Company and the Lake Shore Company have covenanted and agreed, and do hereby covenant and agree with each other as follows:

Article I. Covenants of the Eastern Illinois Company

Section 1. For and during the term hereof, so far as it can legally do so, and strictly subject to the terms, conditions, covenants, and agreements herein expressed, the Eastern Illinois Company has

granted and does hereby grant unto the Lake Shore Company the right and privilege of using, jointly with the Eastern Illinois Company, for the purpose of running the locomotives, trains, and cars of the Lake Shore Company thereover, the lines of railroad and appurtenant facilities now owned or operated by the Eastern Illinois Company in the States of Illinois and Indiana, and also such lines of railroad as hereafter during the term hereof may be owned or operated by the Eastern Illinois Company, together with the connections now existing or hereafter made by the Eastern Illinois Company between its said railroad lines and such other lines of railroad as do now or may hereafter cross or connect with any of said lines of the Eastern Illinois Company; provided, however, that such right and privilege of user shall not extend to or include the tracks of other railroad companies now or hereafter used by the Eastern Illinois Company under contracts which prevent the use by the Lake Shore Company of the tracks of such other companies. All of said lines of railroad, the privilege of using which is hereby granted to the Lake Shore Company, are hereinafter called the Eastern Illinois Lines.

It is expressly understood and agreed that such use of the Eastern Illinois Lines by the Lake Shore Company shall be subject at all times to the rules and regulations of the Eastern Illinois Company for the operation of its own trains of the same or a similar class, including any rules that may be from time to time adopted by the Eastern Illinois Company, for using certain lines for the passage of trains in one direction, and thereby forming double tracks with other lines used for the movement of trains in the opposite direction.

It is further expressly understood and agreed that the right of user hereby granted to the Lake Shore Company does not embrace the right to use any of the yard or terminal facilities (elsewhere than at mines, quarries, and coke works) of the Eastern Illinois Company, except such use as is necessary for the movement of through trains, or to use any bridge across the Ohio, the Mississippi, or the Missouri River, which is now or hereafter may be constructed, or any approach to such bridge, except upon such terms and conditions as may be hereafter from time to time agreed upon between the parties hereto.

SECTION 2. Nothing in this agreement contained shall be construed in any manner to affect or abridge any of the corporate franchises or powers of the Eastern Illinois Company to use and operate its railroad and property on its own behalf at all times, and to perform and exercise all the corporate franchises, powers, and privileges which it may at any time possess, but not so as to unnecessarily impair the rights and privileges hereby granted to the Lake Shore Company.

SECTION 3. If at any time during the term hereof it shall become necessary to do so, in order to accommodate the traffic of the Lake Shore Company to be carried over the railroad of the Eastern

Illinois Company as herein provided, and when requested so to do by the Lake Shore Company, so far as the charter powers and rights of the Eastern Illinois Company will permit, the Eastern Illinois Company shall construct track connections with coal mines and other industries, or with other railroads now or hereafter crossing or connecting with the Eastern Illinois Lines: it being expressly understood and agreed that the Lake Shore Company will promptly pay to the Eastern Illinois Company the entire cost of constructing and maintaining such tracks and connections whenever bills therefor are presented by the Eastern Illinois Company; provided that, at the termination of this agreement, all such tracks and connections so constructed by the Eastern Illinois Company, for the use and at the expense of the Lake Shore Company, may be purchased by the Eastern Illinois Company at their then value, to be determined by the parties hereto, or by arbitration as hereinafter provided, and if the Eastern Illinois Company shall not desire to purchase such tracks and connections, the same may be removed by the Lake Shore Company at its sole cost and expense; and provided further that if the Eastern Illinois Company in any case elects to build such tracks and connections at its own cost and expense, it may do so, and in such case the Lake Shore Company will pay for the use thereof the same rate per train mile as for the use of other parts of the Eastern Illinois Lines contiguous to such connections.

SECTION 4. Upon the request of the Lake Shore Company, and in the same manner and to the same extent as the Eastern Illinois Company furnishes water and fuel to its own locomotives, the Eastern Illinois Company shall furnish such water and fuel as the Lake Shore Company may require for the operation of its trains upon the Eastern Illinois Lines, which such fuel shall be furnished and paid for at the actual cost thereof to the Eastern Illinois Company in the coal chutes in which the same shall be stored along the Eastern Illinois Lines, and the water thus supplied shall be furnished without any compensation other than the train mile rates herein provided for.

Article II. Covenants of the Lake Shore Company

SECTION 1. The Lake Shore Company hereby accepts the aforesaid rights and privileges in accordance with the terms, conditions, covenants, and agreements herein expressed, and will enter upon the use and enjoyment of such rights and privileges at twelve o'clock midnight on the 31st day of January 1909.

SECTION 2. The Lake Shore Company will pay to the Eastern Illinois Company the sum of One Dollar per train mile for each mile each train of the Lake Shore Company, of empty cars or of cars carrying eighteen hundred tons or any less amount of freight one way is moved over any part of the Eastern Illinois Lines lying north of a line drawn through the passenger station at Sidell, Illi-

nois, and through the passenger station at Clinton, Indiana, as those stations are now located; and the sum of One Dollar per train mile for each mile each train of the Lake Shore Company, of empty cars or of cars carrying eighteen hundred tons or any less amount of freight one way, is moved over any double track railroad of the Eastern Illinois Lines in first-class condition south of such line drawn through said stations; and the sum of seventy-five cents per train mile for each mile each train of the Lake Shore Company, of empty cars or of cars carrying eighteen hundred tons or any less amount of freight one way is moved over any single track railroad of the Eastern Illinois Lines south of such line drawn through said stations. For every train of the Lake Shore Company which carries in excess of eighteen hundred tons of freight, the Lake Shore Company shall pay to the Eastern Illinois Company proportionately increased rates. Said rates per train mile are based upon the expressed intention of the Lake Shore Company that each train shall carry freight one way only and return empty; provided, however, that trains loaded only with railroad employees, and (or) materials and (or) supplies for the use of the Lake Shore Company shall be considered empty trains. In order to assure unto the Eastern Illinois Company an adequate minimum revenue for the rights and privileges hereby granted to the Lake Shore Company, the Lake Shore Company will pay to the Eastern Illinois Company a minimum amount of $10,000 for each calendar month, commencing February 1, 1909, and continuing during the term hereof as herein provided; it being understood and agreed that such minimum payment shall amount to at least $120,000 per year. If during any month or months of any calendar year the number of train miles run by the Lake Shore Company over the Eastern Illinois Lines shall not be sufficient, at the train mile rates aforesaid, to make up the amount of $10,000 to be paid for each such month, so that the Lake Shore Company shall have paid an amount in excess of the amount due for the actual train miles run at the rates aforesaid for such month or months, and the aggregate number of train miles run by the Lake Shore Company over the Eastern Illinois Lines during the same calendar year is sufficient, at said train mile rates, to make up the aggregate sum of $120,000, the Eastern Illinois Company, within twenty days after the close of such calendar year, shall reimburse the Lake Shore Company to the extent to which such payments in any month or months of such year shall have exceeded said rates for the actual train miles run by the Lake Shore Company.

SECTION 3. The Lake Shore Company will keep accurate accounts of all movements of its trains over the Eastern Illinois Lines and of the tonnage of freight carried in such trains, and on or before the fifteenth day of each month during said term, commencing with the month of March 1909 shall furnish to the Eastern Illinois Company a true statement of such mileage and tonnage of the trains of the Lake Shore Company moved over any part of the Eastern Illinois

Lines during the next preceding month, and the amount due to the Eastern Illinois Company for such rights and privileges for each month shall be paid to the Eastern Illinois Company, at its office in the City of Chicago, on or before the twentieth day of the next following month. The Eastern Illinois Company shall be afforded reasonable opportunity, from time to time, to examine the books and records of the Lake Shore Company pertaining to such train movements and tonnage, for the purpose of verifying such statements.

SECTION 4. During the entire term of this agreement, the Lake Shore Company will transport over the Eastern Illinois Lines all coal, coke, limestone, and other commodities which the Lake Shore Company shall carry from any mine, quarry, plant, or place reached by any of the Eastern Illinois Lines, for the use of the Illinois Steel Company, the United States Steel Corporation, or any other company or plant in which either of them is interested as a stockholder or otherwise.

Article III. Mutual Covenants

SECTION 1. The maintenance, operation, repairs, and renewals of the Eastern Illinois Lines shall be under the sole charge and supervision of the Eastern Illinois Company, which shall keep said lines in good condition.

SECTION 2. Except when, and to such extent as, the present standard of weight and capacity of locomotives and cars moved by the Eastern Illinois Company shall be increased, the Lake Shore Company shall not move over the Eastern Illinois Lines, or any part thereof, any cars of greater capacity than those which are now owned by the Lake Shore Company, or any engines of greater weight than the largest at the time in use by the Eastern Illinois Company on such part of its lines. The engines, trains, and cars of the Lake Shore Company, while on the Eastern Illinois Lines, shall be operated by employees of the Lake Shore Company, subject, however, to the rules, regulations, and directions of the Eastern Illinois Company. Schedules for the movement of trains over the Eastern Illinois Lines shall be arranged by the Eastern Illinois Company, and the Eastern Illinois Company shall have the right to examine the employees of the Lake Shore Company upon the rules and regulations of the Eastern Illinois Company, for the government of its employees engaged in handling engines, cars, and trains upon the Eastern Illinois Lines, and the Lake Shore Company shall not employ or retain in its employ, in the running of its trains or engines upon the Eastern Illinois Lines, any employee who may fail upon such examination or be objectionable or unsatisfactory to the managing officer of the Eastern Illinois Company. Trains of each party shall have the right of way over all trains of the other party of an inferior class, but otherwise, as nearly as may be practicable, equality of right, privilege, and advantage shall be given to trains of the same class operated by either party. No discrimination shall

be made by the Eastern Illinois Company in favor of or against the Lake Shore Company in connection with the use of the Eastern Illinois Lines.

SECTION 3. All operators, dispatchers, agents, and others (including train crews of work-trains, but excluding train crews of other trains) engaged in the supervision, maintenance, repair, renewal, or operation of the Eastern Illinois Lines, although paid by the Eastern Illinois Company, shall be considered joint agents of the parties hereto in respect of any liability for damage or injury due to any act, or omission to act, in respect of the maintenance, repairs, renewals, or joint operations over the Eastern Illinois Lines, and they shall render to each party hereto such services as they may be called upon to render within the scope of their position or employment, and shall be removed from the service upon the written request of the managing officer of either of the parties hereto.

SECTION 4. It is the intent of this agreement that the Lake Shore Company shall not, unless required by law so to do, engage in passenger traffic or in any traffic which both originates at and is destined to points on the Eastern Illinois Lines, nor in any traffic that may compete with the traffic of the Eastern Illinois Company, except freight traffic destined to or from points on the railway lines owned or operated by the Lake Shore Company; and except, further, coal, coke, limestone and other supplies mined, manufactured or acquired by the Illinois Steel Company or the United States Steel Corporation, or any of the companies which either of them owns or is interested in as a stockholder or otherwise, and which coal, coke, limestone or other supplies originate at points now or hereafter reached by the Eastern Illinois Lines and are to be used in the operation of the properties of the Illinois Steel Company or of the United States Steel Corporation, or of any of the companies or properties in which either of them is interested as a stockholder or otherwise. If the Lake Shore Company shall carry on its trains or engines, over the Eastern Illinois Lines or any part thereof, passengers other than its officers and employees actually engaged in the service of the Lake Shore Company, or shall engage in any traffic contrary to the intent of this agreement, as herein expressed, the Lake Shore Company will promptly report such passengers and traffic to the Eastern Illinois Company, and will pay to the Eastern Illinois Company, in addition to the train mile rates hereinbefore provided for, the full tariff rates of the Eastern Illinois Company at the time in force for the carriage of such passengers or traffic.

SECTION 5. The Lake Shore Company shall not collect or receive, for the carriage of freight over any part of the railroad of the Eastern Illinois Company, less than the freight charges named in the published tariffs of the Eastern Illinois Company, which shall from time to time be in force, covering the same kind of freight between the same points, and the Lake Shore Company shall not quote or publish less tariff rates for the transportation of freight,

between points on the Eastern Illinois Lines and points beyond said lines, than the tariff rates published by the Eastern Illinois Company and in force at the same time between the same points.

SECTION 6. It is understood and agreed that for the purposes of this agreement, each locomotive, with or without cars attached, moving over any part of the Eastern Illinois Lines, shall be considered a train; doubleheaders, if any, shall be counted as two trains.

Article IV. Liabilities for Personal Injuries, Damages, Etc.

It is mutually understood and agreed that the liability of the respective parties hereto for accidents, personal injuries or death, or damages to property, incident to the operation of the Eastern Illinois Lines, shall be fixed and determined as follows:

SECTION 1. Except as hereinafter otherwise expressly provided, each party hereto shall be solely liable for all injury, loss or damage caused by its own trains, engines or cars to the other party hereto or to third persons, or caused to its own trains, engines or cars or to persons or property thereon.

SECTION 2. Each party hereto shall be liable for all injury, loss or damage caused by its own train crews (meaning thereby engineers, firemen, conductors, brakemen or other trainmen), other than work-train crews of the Eastern Illinois Company.

SECTION 3. Each party hereto, in respect of the safety and movement of its own trains and of all persons and property thereon, or injury or damage thereto, shall be responsible for the condition of the track and other structures on the right of way, and for the acts or neglect of any joint agent (as defined in Section 3 of Article III hereof) or of any stranger to both parties hereto.

SECTION 4. In case, by reason of any accident to the engine, train, or car of one party hereto, loss, damage, or injury shall be done to the engine, train, or car, or to persons or property thereon of the other party hereto on another track, the party to whose engine or train such accident occurs shall be solely responsible for and shall pay for such loss, damage, or injury.

SECTION 5. Neither party shall have a right of action for damages against the other party for any delay to or interruption of traffic from any cause (other than the wilful and intentional act or default of the other party), or for damages to persons or property, by reason of such delay or interruption of traffic.

SECTION 6. In case of a collision between the respective engines, cars, or trains of both parties on the same track, the party whose train crew alone shall have been at fault, or caused the collision, shall be solely liable for the entire injury, loss, or damage caused thereby. In case such collision shall be caused by the fault of the train crews of both parties, or by the fault of any joint agent as hereinbefore defined, or of strangers to both parties, or in case the cause of such collision shall be so concealed that the responsibility

therefor cannot be determined, the liability for all the loss, damage, and injury thereby caused shall be equally divided between both parties hereto.

SECTION 7. In the event of the killing of livestock not in transit, or in the event of damage on account of personal injuries to or death of persons not riding on the trains of either party, or in the event of any damage by fire caused by or incident to the operation of the trains of either party upon the Eastern Illinois Lines or upon land adjoining the same, without regard to the physical condition of the Eastern Illinois Lines or their appurtenances, the claims arising therefrom shall be adjusted and settled by the proper officers of the Eastern Illinois Company after notice to the other company (if it be intended to hold the other company liable), and the party whose train causes such damage or injury shall pay the full amount of such adjustment or settlement. In the event of loss, damage, or injury occurring to persons or property on the trains of either party hereto, the proper officer of the party on whose train such loss, damage, or injury may occur shall adjust and settle the same, and in all cases of settlement under this Section 7, the release shall be executed in duplicate and shall be made to include, and shall free and discharge both of the parties hereto from all claims for such loss, damage, or injury.

SECTION 8. In the event of the destruction of or injury or damage to any of the depots, buildings, bridges, tracks, culverts, or other appurtenances of the Eastern Illinois Lines, caused by the engines, trains, or cars of the Lake Shore Company, or resulting from the carelessness or negligence of any employee of the Lake Shore Company, the whole of the expense of replacing or renewing such property, less the insurance, if any, collected thereon, shall be paid by the Lake Shore Company, to the extent that such replacement or renewal is necessary to restore the general character of the work or property destroyed.

SECTION 9. All liabilities of either party hereto, determined by this Article IV, shall be fully discharged by such party, and it shall indemnify and save harmless the other party from any payment, claim, action, or judgment based thereon, including costs, attorneys' fees, and other expenses, and including also the cost of clearing the track or repairing any damage to the railroad or its appurtenances, made necessary by the accident or casualty, in respect of which such liability attaches.

SECTION 10. All pending controversies between the parties hereto relative to their respective liabilities for losses, damages and personal injuries heretofore sustained, shall be settled in accordance with the provisions of this Article IV.

Article V

SECTION 1. The rights of the Lake Shore Company under this agreement shall be dependent upon prompt payment by it of all moneys, and the faithful performance by it of all its obligations,

397

the payment or performance of which it has assumed in this agreement. If sixty days' default shall be made by the Lake Shore Company in the making of any payment which it is required to make by this agreement, after such payment shall have become due, or if the Lake Shore Company shall fail for sixty days to comply with any of its covenants under this agreement, the Eastern Illinois Company may at its option, at any time while such default continues, give to the Lake Shore Company written notice that if such default shall continue for the further period of thirty days, this agreement will be terminated and annulled, and if such default shall continue for such period of thirty days, this agreement, at the option of the Eastern Illinois Company, may be terminated and annulled at the expiration of such thirty days, and the Eastern Illinois Company may then exclude the Lake Shore Company from any further use and enjoyment of the rights and privileges by this agreement granted. It is understood, however, that in the event of the termination of this agreement as aforesaid, each party shall have the right, notwithstanding such termination, to recover from the other party any obligation or liability which shall have accrued under this agreement while the same was effective and in operation.

SECTION 2. Nothing in this agreement contained shall prevent the Eastern Illinois Company from admitting one or more additional railroad companies to the use of the Eastern Illinois Lines or any part thereof.

Article VI. Arbitration

In case any dispute or difference of opinion shall arise under this agreement between the parties hereto, which they are unable to settle or adjust between themselves, the same may be submitted to two arbitrators, one of whom shall be appointed by the President or a Vice-President of the Eastern Illinois Company and the other by the President or a Vice-President of the Lake Shore Company, and if these two arbitrators cannot agree, they shall select a third, who shall be a disinterested party, and the decision of such arbitrators, or of the majority of them, upon any question submitted to them, shall be final, conclusive, and binding upon the parties hereto. In case either of the parties hereto shall fail to appoint an arbitrator within thirty days after written notice by the other party to make such appointment, the arbitrator appointed by the other party shall have the right to appoint the second arbitrator, and the two arbitrators so chosen shall select the third; and in case the two arbitrators appointed by the parties hereto in the manner aforesaid shall fail within thirty days after their appointment to select a third arbitrator, such third arbitrator, on the application of either party hereto, may be appointed by any judge of the Circuit or District Court of the United States for the Northern District of Illinois. The three arbitrators, so chosen and selected, shall hear and decide all questions of difference submitted to them in writing, and their

decision, or that of a majority of them, shall be final, conclusive, and binding upon the parties hereto.

Article VII. Successors and Assigns

All the grants, covenants and stipulations herein contained shall inure to the benefit of and be binding upon the successors and assigns of the respective parties hereto; provided, however, that no assignment by the Lake Shore Company of any of the rights or privileges hereby granted, otherwise than in connection with the assignment, transfer or lease of all of the railroad property of the Lake Shore Company, shall be made without the written consent of the Eastern Illinois Company, and any such assignment, made without the consent of the Eastern Illinois Company, shall be absolutely void.

Article VIII. Term

This agreement shall take effect at twelve o'clock midnight of the thirty-first day of January 1909 and shall continue in full force and effect for the period of fifty years from and after that date, unless sooner terminated in the manner hereinbefore stated; provided, however, that the Lake Shore Company may terminate this agreement on the first day of August 1916 or on the first day of February 1919 or at the end of any five year period after the first day of February 1919 by giving two and one-half years' notice in writing to the Eastern Illinois Company of the election of the Lake Shore Company so to terminate this agreement, and upon paying to the Eastern Illinois Company the sum of $25,000 as further consideration for such privilege of termination.

In witness whereof, the parties hereto have caused this agreement to be signed by their respective Presidents or Vice Presidents, and their respective corporate seals to be hereunto affixed, attested by their respective Secretaries or Assistant Secretaries, the day and year first above written.

CHICAGO AND EASTERN ILLINOIS RAILROAD COMPANY.
By H. I. MILLER, *President.*

O. K. W. H. L. Chicago and Eastern Illinois Railroad Company.

Attest:

J. S. FORD,
Secretary.

CHICAGO, LAKE SHORE AND EASTERN RAILWAY COMPANY.
By A. F. BANKS, *President.*

O. K./K. K. Knapp. G. C—C. L. S. & E. Ry. Co. Chicago, Lake Shore and Eastern Railway Company.

[CORPORATE SEAL.]

Attest:

W. K. ALLEN,
Secretary.

238 *Defendant's Exhibit 2*

Excerpt from the minutes of a meeting of the Board of Directors of the Chicago, Lake Shore and Eastern Railway Company

December 20, 1922

Whereupon, the following resolution was introduced, and on motion duly seconded was unanimously adopted:

"Resolved, That the act of the President of this Company in agreeing that if the Chicago & Eastern Illinois Railway Company would assume and adopt the agreement dated February 1, 1909, and expiring January 31, 1959, by which the Chicago & Eastern Illinois Railroad Company granted trackage rights to the Chicago, Lake Shore and Eastern Railway Company, then this Company would agree to pay to the said Chicago & Eastern Illinois Railroad Company, in addition to the compensation as provided in said agreement, the further sum of two cents (2¢) per ton on all freight handled by this company over the railroad described in said agreement from November 1, 1922, until the expiration of said agreement on January 31, 1959, be and the same is hereby approved, ratified, and confirmed."

[File endorsement omitted.]

STATE OF ILLINOIS,
County of Cook, *ss:*

I, Edw. Beecroft, do hereby certify that I am the Secretary of the Chicago, Lake Shore and Eastern Railway Company and keeper of the records of said company, that the above and foregoing is a true and correct copy of resolution adopted by the Board of Directors of said company on December 20, 1922, at a meeting called and held and at which a quorum of said directors were present.

Given under my hand and the seal of said Corporation this 6th day of Jany 1934.

[SEAL] EDW. BEECROFT.

[File endorsement omitted.]

Defendant's Exhibit 3

Elgin, Joliet and Eastern R. R. coal contract

Name of bidder	Mine name	General location	Seam, vein, or quality designation	Mine price	Estimated mileage to E., J. & E.	Cost to E., J. & E. @ 6/10¢ per ton mile	Total cost to line
E. W. & Franklin	Wilmington	Wilmington, Illinois	#3 Geo. Seam	3.10	15.3	.09	3.19
"	Royal	Virden Macoupin Co.	#6 " "	2.20	167	1.00	3.20
"	Thayer	Thayer Sangamon Co.	#6 " "	2.20	167	1.00	3.20
"	Benton	Benton Franklin Co.	#6 " "	2.35	271	1.626	3.976
Powers Coal	Rowland Power	Staunton Clay Co.	#3 Ind. Seam	2.00	174	1.044	3.044
Wilcoxson	Sangamon #2	Springfield, Illinois	#6 Ill. "	2.20	147.9	.8874	3.09
"	Auburn	Auburn, Illinois	#6 " "	2.20	163	.978	3.178
Consumers	Kincaid-Pawnee-Sherman, etc.		#6 " "	2.20	166	.996	3.196
"	Humera	Humera, Ind.	#5 Linton Seam	2.20	167	1.00	3.20
O'Gara	#1-#15	Harrisburg, Ill., Salina Co.	#5	2.35	286	1.72	4.07
Clinton Coal Co.		Clinton Ver. Co., Ind.	#4	2.35	127	.762	3.11
"		do	#5	2.20	127	.762	2.96
J. K. Dering	#6 & #8	do	#4	2.35	127	.762	3.11
"	#2 & #3	Eldorado Saline Co., Ill.		2.35	285	1.71	4.06
"	Hillsbora	Hillsbora, Ill., Montgomery Co.		2.20	205	1.23	3.43
Old Ben	Christopher	Christopher, Ill., Franklin Co.	#6	2.35	261	1.566	3.92
Lumghi	Cantine	Cantine, Madison Co.		1.90	247	1.48	3.38
Miami	Miami #5-6 & 9	Clinton, Ind.	#5	2.20	127	.762	2.96
Union	Kathleen	Duquois, Ill., Jackson Co.	#6	2.20	261	1.56	3.76
Peabody		Westville, Ill.	#5	2.20	105.7	.634	2.834
U. S. Fuel	Ver. Kelly #3 & 4	Westville, Ill., Vermillion Co.	#6	2.00	105.7	.634	2.634
Deep Vein		Princeton, Ind., Gibson Co.		2.20	232.5	1.395	3.595
Coal Ridge	Coal Ridge #1	Linton, Ind., Green Co.	#5	2.00	256.5	1.539	3.539
Peerless		Springfield, Ill.		2.20	147.9	.8874	3.08
Bledsoe	Clovelly	W. Clinton, Vigo Co., Ind.	#5	2.20	127	.762	2.962
"	Fayette	W. Clinton, Vigo Co., Ind.	#4	2.35	127	.762	3.11
"	Farmesburg, Mildred	Seifert, Sullivan Co., Ind.	#6 & #7	2.10	165	.99	3.09
Keller		Makomis, Ill., Montgomery Co.		2.20	191	1.148	3.35
"		Clinton, Ind.	#3 & #5	2.20	127	.762	2.96
"		Paxton, Ind.	#5	2.20	182.7	1.096	3.296
Nason	Reliance	Nokomis Montgomery Co.	#6	2.20	191	1.148	3.35
Sagamon Co.		Springfield, Ill.	#5	2.15	147.9	.8874	3.04
Bogle	Pine Ridge Mine	Libertyville, Vigo Co.	#5	2.20	133	.798	2.998
Bogle	St. Bernice	N. Clinton, Ind., Vermillion Co.	#5	2.20	127	.762	2.96
Bickett	Steele Kattman	Hymera, Ind., Sullivan Co.		2.10	167	1.00	3.10
	Elec. Coal	Bunson, Ill.		2.20	100	$.60 plus .15	2.95
Consolidated	#7 & 14	Staunton, Ill.	#6	2.20	212.6	1.275	3.475
	#15	Mt. Olive	#6	2.20	206.9	1.24	3.44
Sterling Midland	Elec. Coal	Bunson, Ill.		2.04	100	$.60 plus .15	2.79
	Consolidated	Staunton, Ind., Clay Co.	#3	1.95	174	1.044	2.994

240

Defendant's Exhibit # 4

Contract for Coal, #925

1919

Eff. 5-11-19 to 3-31-20

[File endorsement omitted.]

This Agreement, made and entered into this 11th day of April 1919 by and between United States Fuel Company, a corporation (hereinafter called the "Fuel Company"), party of the first part, and Director General of Railroads, Elgin, Joliet & Eastern Railroad (hereinafter called the "Railroad"), parties of the second part, Witnesseth:

First. The Fuel Company hereby sells and agrees to deliver to the Railroad, f. o. b. cars, the mines of the Fuel Company, located in the vicinity of Westville, Illinois, and the Railroad hereby purchases and agrees to accept from the Fuel Company the Railroad's entire requirements of mine run coal, geologically known as No. 6 vein, during the period from the date hereof to and including March 31, 1920.

Second. The Railroad agrees to pay to the Fuel Company on the 20th day of each month at the office of the Fuel Company in Chicago, Illinois, the sum of Two Dollars ($2) for each ton of two thousand (2000) pounds of coal delivered by the Fuel Company to the Railroad as aforesaid, during the preceding month. It is distinctly understood that the prices named herein are based on existing rates of pay for all mine labor and the prices will be subject to readjustment in event existing rates of pay are changed.

Third. It is mutually understood and agreed that the Railroad shall have the right to inspect all of said coal at point of shipment and that mine weights shall govern settlements.

Fourth. The Fuel Company shall not be liable to the Railroad for any damages which the Railroad may sustain by reason of the failure of the Fuel Company to furnish coal, caused by fire, strikes, lock-outs, differences with workmen, inevitable accidents, war, insurrection, governmental interference or regulation, or contingencies beyond the Fuel Company's control, and during the time of such delays the Fuel Company shall have the right to prorate among its various customers such coal as it may be able to produce.

Fifth. The Fuel Company expressly warrants that it has employed no third person to solicit or obtain this contract in its behalf, or to cause or procure the same to be obtained, upon compensation in any way contingent, in whole or in part, upon such procurement, and that it has not paid, or promised or agreed to pay, to any third person, in consideration of such procurement, or in compensation

for such services in connection therewith, any brokerage commission or percentage upon the amount receivable by it hereunder, and that it has not, in estimating the contract price demanded by it, included any sum by reason of any such brokerage commission or percentage, and that all moneys payable to it hereunder are free from obligation to any other person for services rendered or supposed to have been rendered in the procurement of this contract. It further agrees that any breach of this warranty shall constitute adequate cause for the annulment of this contract by the United States, and that the United States may retain to its own use from any sums due or to become due thereunder, an amount equal to any brokerage, commission or percentage so paid or agreed to be paid.

Sixth. This agreement of the Director General of Railroads shall not extend beyond the period of Federal Control of Railroads, and unless sooner terminated shall, as to him, terminate at the end of such Federal Control.

In Witness Whereof, the parties hereto have duly executed these presents the day and year first above written.

UNITED STATES FUEL COMPANY,
By C. S. WARDLEY, *Secretary.*
DIRECTOR GENERAL OF RAILROADS,
By C. H. KENGEL,
Purchasing Agent, Elgin, Joliet & Eastern Railroad.

Approved as to form. Knapp and Campbell. H. I. Allen. 4118119.

Approved Regional Purchasing Committee North Western Region. By L. S. Carroll.

HIA-L —

MAY 26, 1919.

Notice—Coal Purchase

Pursuant to instructions of the Director General of Railroads to make public certain information relative to contracts made for fuel coal for locomotives and other purposes, the following contract has been concluded:

Purchased: Elgin, Joliet & Eastern Railroad.
Contractor: United States Fuel Company.
Tonnage: Approximately 600,000 net tons.
Period of Contract: April 11th, 1919, to March 31st, 1920.
Price per ton: $2.00 net.
Place of delivery at price quoted: Westville, Ill., Mines.
Date: May 26th, 1919.

Purchasing Agent.

241 *Defendant's Exhibit 5*

Illinois Steel Company—materials received—gross tons

GARY

	1926	1927	1928	1929	1930	Total
By water:						
Ore	4,897,917	4,106,754	4,834,917	5,763,558	3,947,257	23,550,403
Limestone	1,146,145	1,123,459	1,205,650	1,240,646	948,434	5,664,334
Coal			447,835	772,442	1,135,775	2,356,052
Spiegel					7,202	7,202
Total Water	6,044,062	5,230,213	6,488,402	7,776,646	6,038,668	31,577,991
By rail:						
Coal	5,139,230	4,545,690	4,635,964	4,635,916	3,102,856	22,059,656
Scrap	267,177	270,867	372,748	400,070	419,584	1,730,446
Sand & Gravel	96,644	47,988	33,482	71,184	162,519	411,817
Limestone	223,200	148,393	168,336	183,149	132,341	855,509
Miscellaneous	190,188	197,206	136,522	161,036	214,111	899,063
From Other Works	216,574	199,329	178,828	175,404	117,517	887,652
Total Rail	6,133,103	5,409,473	5,525,880	5,626,759	4,148,928	26,844,143
Total Rail and Water	12,177,165	10,639,686	12,014,282	13,403,405	10,187,596	58,422,143

The above does not include Stores and Construction Materials.
12/12/33/LC.
[File endorsement omitted.]

242 *Department's Exhibit 6*

Illinois Steel Co.—Materials received—gross tons

SOUTH CHICAGO

	1926	1927	1928	1929	1930	Total
By water:						
Ore	3,963,826	3,592,610	4,377,897	5,072,777	3,870,329	20,877,439
Limestone	1,082,618	802,737	861,595	927,868	857,728	4,532,546
Spiegel					3,604	3,604
Total water	5,046,444	4,395,347	5,239,492	6,000,645	4,731,661	25,413,589
By rail:						
Coal	714,735	747,900	670,440	684,516	497,315	3,314,906
Scrap	58,571	36,597	36,959	40,900	31,728	204,845
Sand and gravel	49,970	51,825	37,929	42,573	186,018	368,315
Limestone	89,398	94,700	97,250	105,003	89,856	476,207
Miscellaneous	81,657	67,850	76,245	83,108	130,994	439,854
From Stockton	55,188	165,039	79,367	46,671	81,633	427,898
From Cavanaugh	60,480	18,197				78,677
Coke from other works	1,777,932	1,471,989	1,692,810	2,073,354	1,497,974	8,514,059
Miscellaneous from other works	47,147	40,809	210,898	35,293	27,862	362,009
Total rail	2,935,078	2,694,906	2,901,898	3,111,508	2,543,380	14,186,770
Total rail and water	7,981,522	7,090,253	8,141,390	9,112,153	7,275,041	39,600,359

The above does not include Stores and Construction Materials.
12/12/33/LC
[Title endorsement omitted.]

243 *Defendant's Exhibit 7*

Illinois Steel Company—materials received—gross tons

JOLIET

	1926	1927	1928	1929	1930	Total
By Water						
By Rail:						
Coal	1,044,393	794,297	932,658	1,527,566	1,014,526	5,313,440
Sand and Gravel	5,469	5,629	4,872	5,229	6,043	27,242
Limestone	2,560	869	272			3,701
Miscellaneous	20,743	17,676	19,828	25,429	15,736	99,412
Ore from Other Works	395,007	386,283	444,623	391,215	332,442	1,949,570
Limestone from Other Works	83,637	84,944	75,387	89,449	73,077	406,494
Miscellaneous from Other Works	168,993	92,196	99,279	145,586	79,383	585,437
Total Rail	1,720,802	1,381,894	1,576,919	2,184,474	1,521,207	8,385,296
Total Rail and Water	1,720,802	1,381,894	1,576,919	2,184,474	1,521,207	8,385,296

The above does not include Stores and Construction Materials.
12/12/33/LC.
[File endorsement omitted.]

244 *Defendant's Exhibit 48*

Illinois Steel Company—Material shipped—Gross tons

GARY WORKS

	1926	1927	1928	1929	1930	Total
Raw Materials and Steel to Other Works of the Illinois Steel Company	1,404,868	1,239,854	1,391,597	1,463,686	1,080,539	6,580,544
Steel to Subsidiaries of U. S. Steel Corporation Located on the E., J. & E. Ry. Company	552,584	535,522	521,357	604,195	489,198	2,702,856
Granulated Cinder to U. A. C. Co. located on the E., J. & E. Ry. Co	518,867	695,395	481,655	131,502	48,534	1,875,953
All Other Shipments (not including internal switching)	2,066,240	1,852,564	2,236,528	2,288,558	1,645,156	10,089,046
Total	4,542,559	4,323,335	4,631,137	4,487,941	3,263,427	21,248,399

1/3/34/LC.

[File endorsement omitted.]

245 *Defendant's Exhibit 9*

Illinois Steel Company—material shipped—gross tons

SOUTH CHICAGO WORKS

	1926	1927	1928	1929	1930	Total
Raw Materials and Steel to Other Works of the Illinois Steel Company	751,037	616,449	564,558	686,585	525,743	3,144,372
Steel to Subsidiaries of U. S. Steel Corporation located on the E., J. & E. Ry. Co.	478,508	581,118	671,705	607,706	558,938	2,897,975
Granulated Cinder to U. A. C. Co. located on the E., J. & E. Ry. Co.	413,305	254,799	503,939	469,578	609,189	2,250,810
All Other Shipments (not including internal switching)	1,668,825	2,029,310	1,654,896	3,362,914	3,650,898	12,366,843
Total	3,311,675	3,481,676	3,395,098	5,126,783	5,344,768	20,660,000

1/3/34/LC.
[File endorsement omitted.]

246 *Defendant's Exhibit 10*

Illinois Steel Company—material shipped—gross tons

JOLIET WORKS

	1926	1927	1928	1929	1930	Total
Raw Materials and Steel to Other Works of the Illinois Steel Company	472,890	312,475	367,791	659,834	439,413	2,252,403
Steel to Subsidiaries of U. S. Steel Corporation Located on the E., J. & E. Ry. Company	141,105	105,854	102,164	156,776	85,993	591,892
All Other shipments (not including Internal switching)	217,329	158,016	185,591	234,097	105,490	900,523
Total	831,324	576,345	655,546	1,050,707	630,896	3,744,818

1/3/34/LC.
[File endorsement omitted.]

247 *Defendant's Exhibit 11*

Illinois Steel Company—Average number of full time employes and salary and wages paid

GARY

	1926	1927	1928	1929	1930	Total
Number of Employees	13,071	11,456	12,120	12,725	12,029	61,401
Salary and Wages	$23,665,641.61	$21,026,705.88	$22,402,461.25	$23,431,122.55	$21,715,636.21	$112,241,567.50

12/12/33/LC.
[File endorsement omitted.]

248 *Defendant's Exhibit 12*

Illinois Steel Company—Average number of full time employes and salary and wages paid

SOUTH CHICAGO

	1926	1927	1928	1929	1930	Total
Number of Employees.	7,601	8,187	8,409	9,324	10,677	44,198
Salary and Wages.....	$14,214,425.36	$15,104,692.78	$15,727,690.90	$17,704,607.48	$19,634,119.91	$82,385,536.43

12/12/33/LC.
[File endorsement omitted.]

249 *Defendant's Exhibit 13*

Illinois Steel Company—Average number of full time employes and salary and wages paid.

JOLIET

	1926	1927	1928	1929	1930	Total
Number of Employees.	2,885	2,542	2,527	2,711	2,523	13,188
Salary and Wages....	$4,634,314.87	$4,129,721.19	$4,145,487.08	$4,299,949.11	$3,624,367.98	$20,831,740.23

12/12/33/LC.
[File endorsement omitted.]

Elgin, Joliet and Eastern

CONNECTING ALL RA
ENTERING CHI

Route via E. J. & E. Ry. a

The E. J. and E. R

BELT LINE SERVICE—A line around the City of Chicago
fast road-to-road transfer at outside po

INDUSTRIAL SERVICE—Exceptional locations for factor
on the E. J. and E. Ry. approximates t
location served by ALL the trunk lines

Harbor Facilities at Waukega
and East Chicag

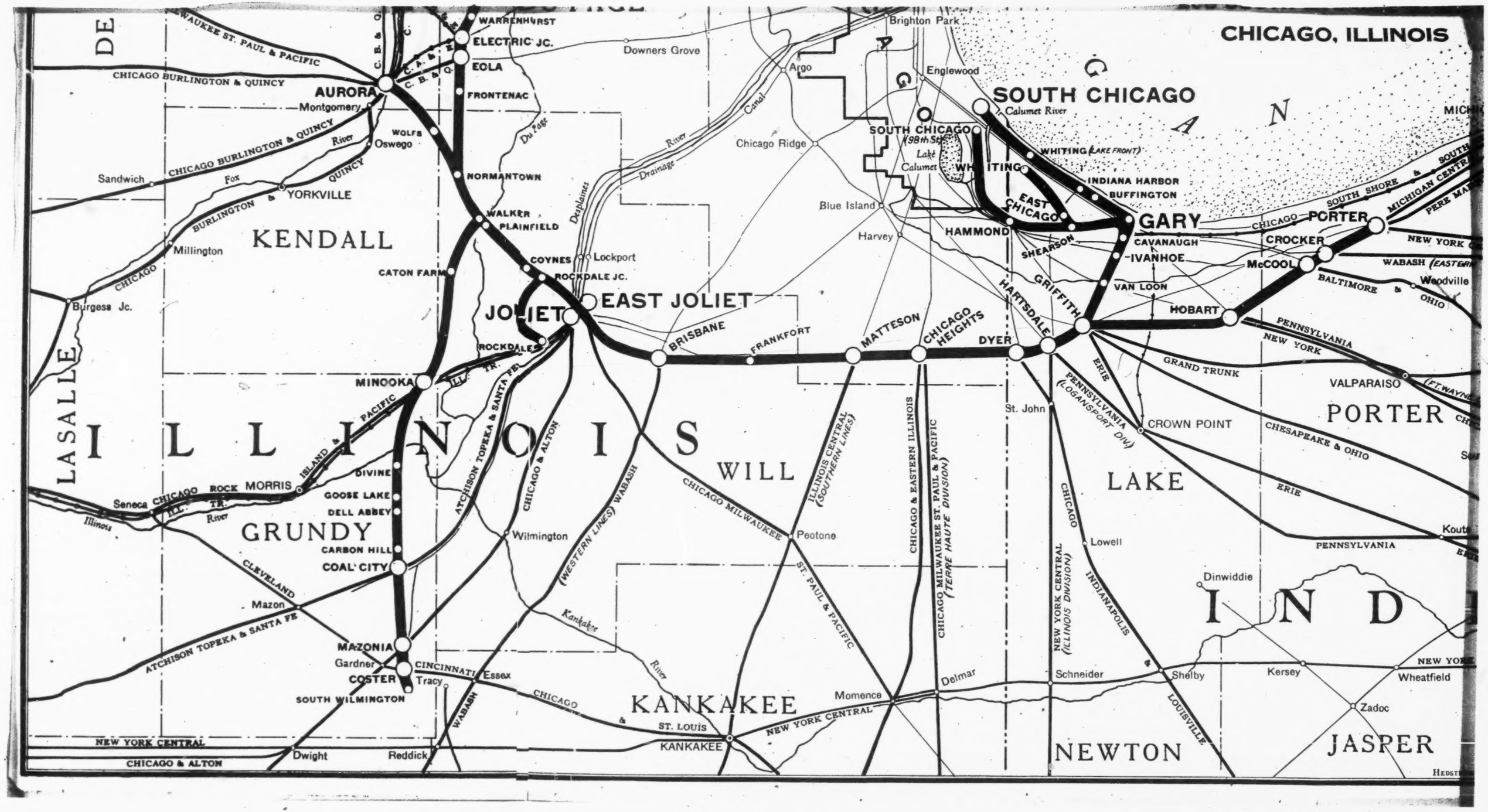
Prompt and Accurate Attention t

Prompt and Accurate Attentio

T. E. BOND, TRAFFIC MA

GENERAL OFFICES:
208 SOUTH LA SALLE STRE
CHICAGO, ILLINOIS

SYCAMORE
Sycamore Jc.
De Kalb Jc.
Cortland
Maple Park
De Kalb
CHICAGO GREAT WESTERN
St. Charles
CHICAGO & NORTH WESTERN
GENEVA
CHICAGO MILWAUKEE ST. PAUL & PACIFIC
CHICAGO BURLINGTON & QUINCY
AURORA
Montgomery
Oswego
Sandwich
Fox River
YORKVILLE
Millington
Burgess Jc.
CHICAGO BURLINGTON & QUINCY
KANE
DE KALB
KENDALL
LASALLE
Coleman
SPAULDING
MUNGER
WAYNE
INGALTON
WEST CHICAGO
Batavia
WHEATON
DU PAGE
WARRENHURST
ELECTRIC JC.
EOLA
FRONTENAC
NORMANTOWN
WALKER
PLAINFIELD
COYNES
Lockport
ROCKDALE JC.
CATON FARM
JOLIET
EAST JOLIET
ROCKDALE
MINOOKA
DIVINE
GOOSE LAKE
DELL ABBEY
CARBON HILL
COAL CITY
GRUNDY
MORRIS
Seneca
Illinois River
CLEVELAND
Mazon
Wilmington
Du Page River
Drainage Canal
Des Plaines River
Franklin Park
Elmhurst
Downers Grove
Argo
Chicago Ridge
Blue Island
Harvey
Mayfair
Clybourn
Chicago River
Brighton Park
Englewood
COOK
CHICAGO
SOUTH CHICAGO
Calumet River
SOUTH CHICAGO (98th St.)
Lake Calumet
WHITING
WHITING (LAKE FRONT)
INDIANA HARBOR
BUFFINGTON
EAST CHICAGO
HAMMOND
GARY
SHEARSON
CAVANAUGH
IVANHOE
VAN LOON
HOBART
GRIFFITH
HARTSDALE
CROCKER
McCOOL
PORTER
CHICAGO SOUTH SHORE & MICHIGAN CE
NEW YO
WABASH (EA
BALTIMORE & OHIO
Wood
PENNSYLVANIA NEW YORK
GRAND TRUNK
VALPARAISO
PORTER
CROWN POINT
CHESAPEAKE & OHIO
ERIE
PENNSYLVANIA
LAKE
St. John
Lowell
Dinwiddie
BRISBANE
FRANKFORT
MATTESON
CHICAGO HEIGHTS
DYER
WILL
ATCHISON TOPEKA & SANTA FE
CHICAGO & ALTON
(WESTERN LINES) WABASH
CHICAGO MILWAUKEE
Peotone
ILLINOIS CENTRAL (SOUTHERN LINES)
CHICAGO & EASTERN ILLINOIS
CHICAGO MILWAUKEE ST. PAUL & PACIFIC (TERRE HAUTE DIVISION)
ST. PAUL & P
PENNSYLVANIA (LOGANSPORT DIV.)
ERIE
CHICAGO
INDIANA
ILLINOIS
IND


CHICAGO, ILLINOIS
DE
LASALLE
ILLINOIS
KENDALL
GRUNDY
LA SALLE
WILL
KANKAKEE
LAKE
NEWTON
JASPER
IND
MILWAUKEE ST. PAUL & PACIFIC
CHICAGO BURLINGTON & QUINCY
C. B. & Q.
C. A. & E.
WARRENHURST
ELECTRIC JC.
EOLA
FRONTENAC
AURORA
Montgomery
WOLFS
Oswego
Sandwich
Fox River
YORKVILLE
NORMANTOWN
WALKER
PLAINFIELD
Millington
CHICAGO BURLINGTON & QUINCY
CATON FARM
COYNES
Lockport
ROCKDALE JC.
JOLIET
EAST JOLIET
Burgess Jc.
ROCKDALES
MINOOKA
ISLAND & PACIFIC
ROCK ISLAND
MORRIS
Seneca
CHICAGO ROCK ISLAND & PACIFIC
Illinois River
DIVINE
GOOSE LAKE
DELL ABBEY
CARBON HILL
COAL CITY
CLEVELAND
Mazon
ATCHISON TOPEKA & SANTA FE
MAZONIA
Gardner
COSTER
SOUTH WILMINGTON
CINCINNATI
Essex
Tracy
WABASH
CHICAGO & ALTON
NEW YORK CENTRAL
Dwight
Reddick
Downers Grove
Du Page River
Desplaines River
Drainage Canal
Chicago Ridge
Argo
Brighton Park
Englewood
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MICHIGAN CENTRAL
CAVANAUGH
IVANHOE
SHEARSON
CROCKER
PORTER
McCOOL
NEW YORK
WABASH (EASTERN)
BALTIMORE & OHIO
Woodville
VAN LOON
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NEW YORK
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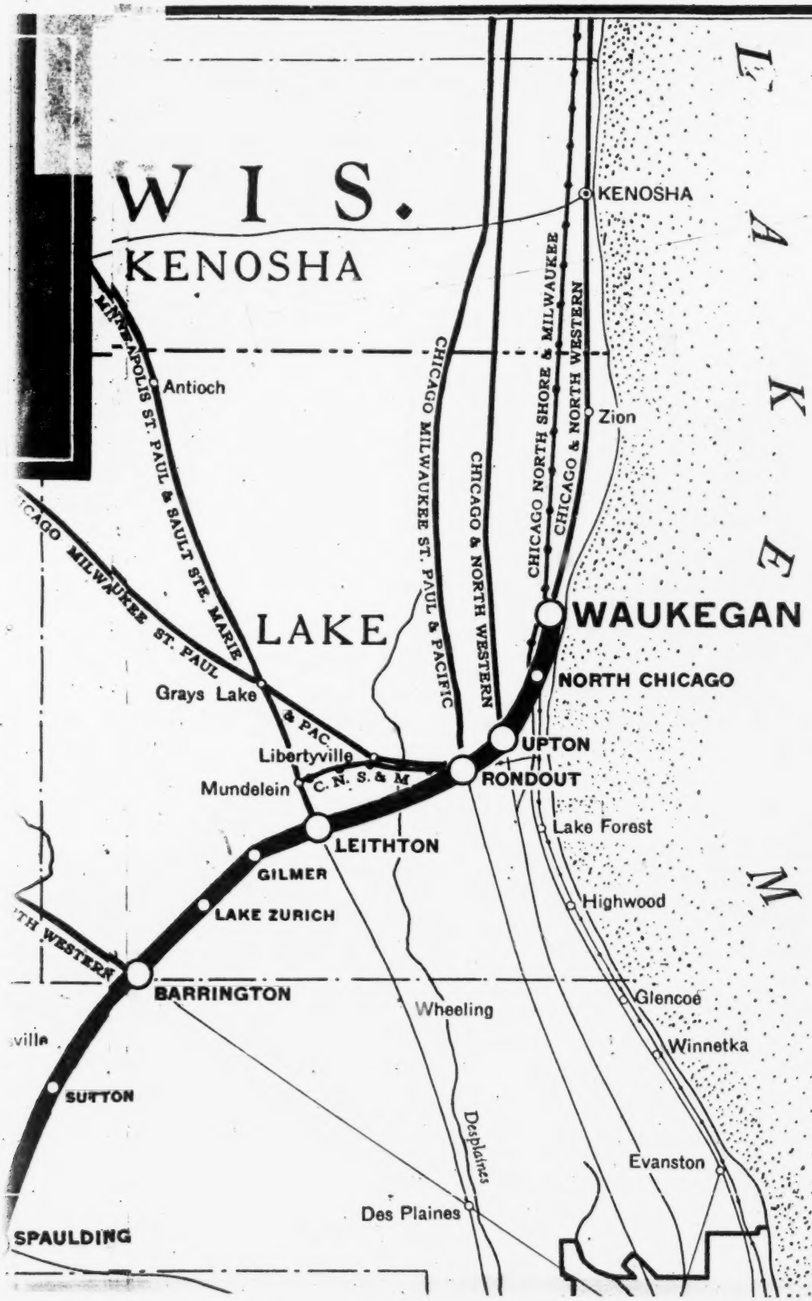
PENNSYLVANIA (LOGANSPORT DIV.)
ERIE
CROWN POINT
CHESAPEAKE & OHIO
PORTER
ILLINOIS CENTRAL (SOUTHERN LINES)
CHICAGO & EASTERN ILLINOIS
CHICAGO MILWAUKEE ST. PAUL & PACIFIC (TERRE HAUTE DIVISION)
CHICAGO MILWAUKEE
Peotone
Wilmington
(WESTERN LINES) WABASH
ST. PAUL & PACIFIC
Kankakee River
Momence
KANKAKEE
ST. LOUIS
NEW YORK CENTRAL
Delmar
Schneider
Shelby
Kersey
Wheatfield
Zadoc
Lowell
CHICAGO INDIANAPOLIS & LOUISVILLE
NEW YORK CENTRAL (ILLINOIS DIVISION)
Dinwiddie
PENNSYLVANIA
ERIE
CHESAPEAKE & OHIO
Kouts



Elgin, Joliet and Eastern Railway Company

CONNECTING ALL RAILROADS ENTERING CHICAGO

Route via E. J. & E. Ry. and Avoid Delays

The E. J. and E. Ry. Offers:

BELT LINE SERVICE—A line around the City of Chicago, equipped with every modern facility for fast road-to-road transfer at outside points of interchange.

INDUSTRIAL SERVICE—Exceptional locations for factories and warehouses. An industry located on the E. J. and E. Ry. approximates the general transportation advantages of a location served by ALL the trunk lines which this line intersects.

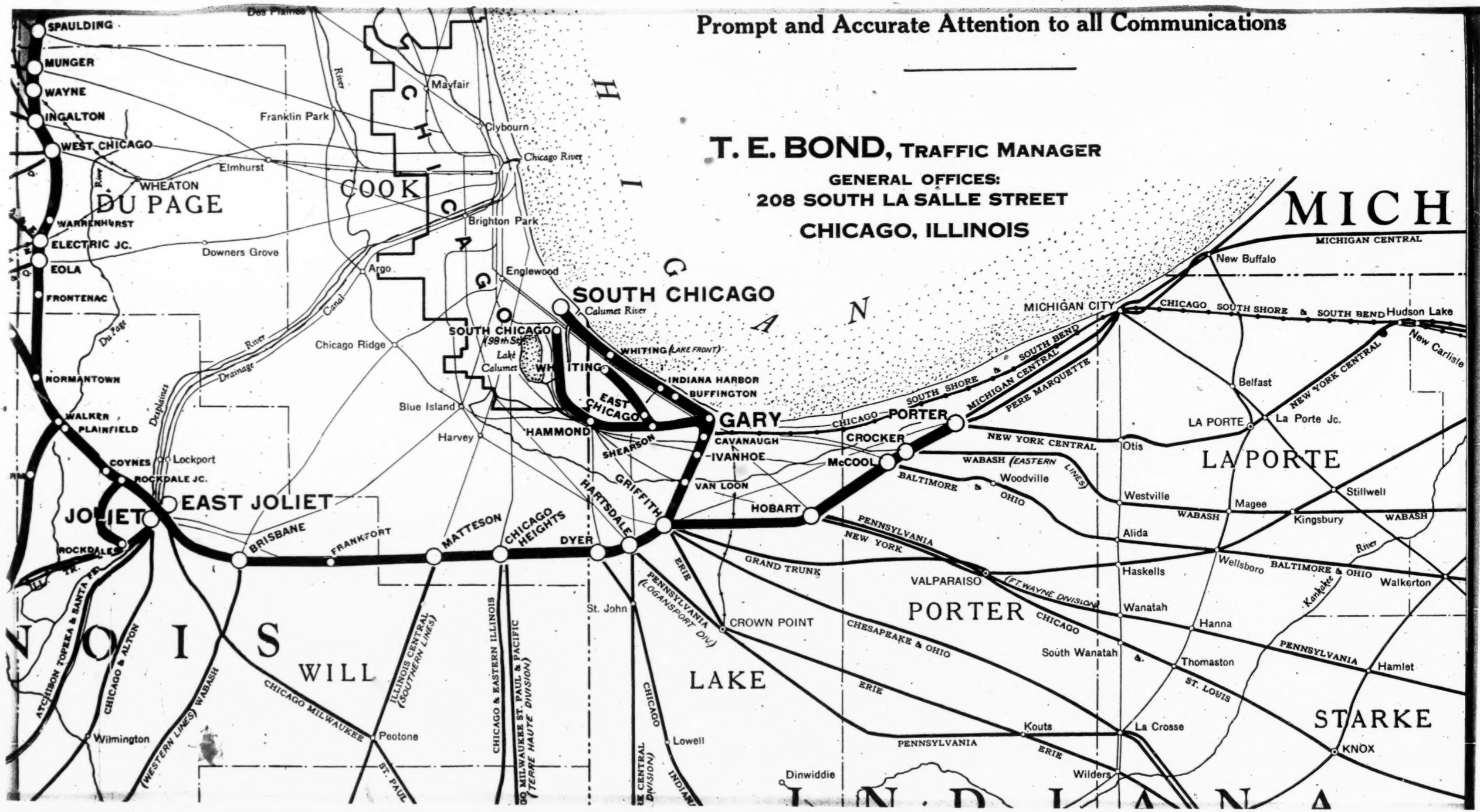
Harbor Facilities at Waukegan, South Chicago, Ill. and East Chicago, Ind.

Prompt and Accurate Attention to all Communications

Prompt and Accurate Attention to all Communications

T. E. BOND, TRAFFIC MANAGER

GENERAL OFFICES:
208 SOUTH LA SALLE STREET
CHICAGO, ILLINOIS



CHICAGO, ILLINOIS

ELECTRIC JC.
EOLA
FRONTENAC
NORMANTOWN
WALKER
PLAINFIELD
COYNES
ROCKDALE JC.
JOLIET
EAST JOLIET
ROCKDALES
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Lake Calumet
WHITING
WHITING (LAKE FRONT)
INDIANA HARBOR
BUFFINGTON
EAST CHICAGO
HAMMOND
GARY
CAVANAUGH
IVANHOE
VAN LOON
SHEARSON
HARTSDALE
GRIFFITH
HOBART
CROCKER
McCOOL
PORTER
CHICAGO SOUTH SHORE & SOUTH BEND
MICHIGAN CENTRAL
PERE MARQUETTE
NEW YORK CENTRAL
BALTIMORE & OHIO
WABASH (EASTERN LINES)
Woodville
MICHIGAN CITY
New Buffalo
Hudson Lake
New Carlisle
Belfast
LA PORTE
La Porte Jc.
Otis
Westville
Magee
Stillwell
Kingsbury
Alida
Haskells
Wanatah
Hanna
Thomaston
Hamlet
Wellsboro
Walkerton
Kankakee River
South Wanatah
La Crosse
Kouts
Wilders
North Judson
San Pierre
Wheatfield
Kersey
Shelby
Schneider
Dinwiddie
Lowell
St. John
CROWN POINT
VALPARAISO
(FT. WAYNE DIVISION)
PENNSYLVANIA
NEW YORK
GRAND TRUNK
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CHICAGO INDIANAPOLIS & LOUISVILLE
PENNSYLVANIA (LOGANSPORT DIV.)
Momence
Delmar
Essex
CINCINNATI
WABASH
CHICAGO & ST. LOUIS
KANKAKEE
Wilmington
Peotone
WILL
KANKAKEE
LAKE
PORTER
NEWTON
JASPER
STARKE
KNOX
PULASKI
INDIANA

HEDSTROM-BARRY CO., Map Engravers, Chicago

Defendant's Exhibit 16

[File endorsement omitted.]

Industrial tracks owned and maintained by Elgin, Joliet and Eastern Railway Company

[Located on plants of industries]

Year 1926—Tracks and Traffic Statistics	Industries Subsidiary to the United States Steel Corporation						Outside Industries not Affiliated with the U. S. Steel Corporation	All Industries
	Gary, Ind., Plant of the Illinois Steel Company	So. Chicago, Ill., Plant of the Illinois Steel Company	Joliet, Ill., Plant of the Illinois Steel Company	Buffington, Ind., Plant of the Universal Atlas Cement Company	Total of the Four Plants: Gary, Ind.; So. Chicago, Ill.; Joliet, Ill.; Buffington, Ind.	All Plants of all Subsidiaries of the U. S. Steel Corporation		
Mileage	123.901	67.990	30.348	18.043	240.282	258.950	23.645	282.595
Cost of Tracks in Place	$1,582,440	$846,046	$352,276	$263,777	$3,044,539	$3,272,735	$232,455	$3,505,190
Cost of Tracks per Mile	$12,772	$12,444	$11,608	$14,619	$12,671	$12,639	$9,831	$12,404
Cost of Maintenance	$221,053	$134,474	$53,387	$18,964	$427,878	$437,506	$42,181	$479,687
Interest on cost of Tracks	$79,122	$42,302	$17,614	$13,189	$152,227	$163,637	$11,623	$175,260
Total	$300,175	$176,776	$71,001	$32,153	$580,105	$601,143	$53,804	$654,947
Number of Cars Passing over Tracks	637,523	313,591	103,944	77,048	1,132,106	1,133,139	46,045	$1,179,184
Number of Tons Passing over Tracks	27,543,012	12,998,470	4,490,260	4,422,411	49,454,153	49,505,803	1,848,210	51,354,013
Cost of Maintenance and Interest (5%) Per Car Passing over Tracks	$.4708	$.5637	$.6831	$.4173	$.5124	$.5305	$1.1685	$.5554
Cost of Maintenance and Interest (5%) Per Ton Passing over Tracks:	$.0109	$.0136	$.0158	$.0073	$.0117	$.0121	$.0291	$.0127
Average Tons per Car	43.2	41.4	43.2	57.4	43.7	43.7	40.1	43.6
Earnings on Switching Wholly Within Plant	$1,398,982	$432,887	$142,692	$16,005	$1,990,566	$1,995,731		$1,995,731

NOTE.—"Cars Passing over Tracks" comprise loaded but not empty cars. "Ton" is ton of 2,000 pounds.

[File endorsement omitted.]

252

Defendant's Exhibit 17

Industrial tracks owned and maintained by Elgin, Joliet and Eastern Railway Company

[Located on Plants of Industries]

Year 1927—Tracks and Traffic Statistics	Industries Subsidiary to the United States Steel Corporation						Outside Industries not Affiliated with the U. S. Steel Corporation	All Industries
	Gary, Ind., Plant of the Illinois Steel Company	So. Chicago, Ill., Plant of the Illinois Steel Company	Joliet, Ill., Plant of the Illinois Steel Company	Buffington, Ind., Plant of the Universal Atlas Cement Company	Total of the Four Plants: Gary, Ind.; So. Chicago, Ill.; Joliet, Ill.; Buffington, Ind.	All Plants of all Subsidiaries of the U. S. Steel Corporation		
Mileage	124.865	67.597	30.115	18.184	240.761	260.304	23.623	283.927
Cost of Tracks in Place	$1,611,259	$854,792	$351,236	$267,126	$3,084,413	$3,316,490	$241,381	$3,557,871
Cost of Tracks per Mile	$12,904	$12,645	$11,663	$14,690	$12,811	$12,741	$10,218	$12,531
Cost of Maintenance	$278,958	$131,869	$56,017	$21,041	$507,885	$513,401	$40,338	$553,739
Interest on Cost of Tracks	$80,563	[illegible]42,740	$17,562	$13,356	$154,221	$165,825	$12,069	$177,894
Total	$359,521	$194,609	$73,579	$34,397	$662,106	$679,226	$52,407	$731,633
Number of Cars Passing over Tracks	530,370	307,600	85,354	69,534	992,858	995,261	46,947	1,042,208
Number of Tons Passing over Tracks	24,024,225	12,549,446	3,662,525	3,914,466	44,150,662	44,270,812	1,856,435	46,127,247
Cost of Maintenance and Interest (5%) Per Car Passing over Tracks	$.6778	$.6327	$.8620	$.4947	$.6669	$.6825	$1.1163	$.7020
Cost of Maintenance and Interest (5%) Per Ton Passing over Tracks	$.0150	$.0155	$.0201	$.0088	$.0150	$.0153	$.0282	$.0159
Average Tons Per Car	45.3	40.8	42.9	56.3	44.5	44.5	39.5	44.3
Earnings on Switching Wholly Within Plant	$1,192,898	$141,793	$125,111	$21,035	$1,780,837	$1,792,852	----------	$1,792,852

NOTE.—"Cars Passing over Tracks" comprise loaded but not empty cars. "Ton" is ton of 2,000 pounds.

[File endorsement omitted.]

Industrial tracks owned and maintained by Elgin, Joliet and Eastern Railway Company

[Located on plants of industries]

Year 1928—Tracks and Traffic Statistics	Industries Subsidiary to the United States Steel Corporation						Outside Industries not Affiliated with the U. S. Steel Corporation	All Industries
	Gary, Ind., Plant of the Illinois Steel Company	So. Chicago, Ill., Plant of the Illinois Steel Company	Joliet, Ill., Plant of the Illinois Steel Company	Buffington, Ind., Plant of the Universal Atlas Cement Company	Total of the Four Plants: Gary, Ind.; So. Chicago, Ill.; Joliet, Ill.; Buffington, Ind.	All Plants of all Subsidiaries of the U. S. Steel Corporation		
Mileage	126.229	69.884	30.115	18.089	244.317	263.862	23.729	287.591
Cost of tracks in place	$1,632,768	$889,598	$353,378	$267,966	$3,143,710	$3,376,894	$243,364	$3,620,258
Cost of tracks per mile	$12,935	$12,729	$11,734	$14,813	$12,867	$12,798	$10,255	$12,589
Cost of maintenance	$248,907	$166,880	$53,847	$22,488	$492,122	$502,113	$37,809	$539,922
Interest on cost of tracks	$81,638	$44,480	$17,669	$13,398	$157,185	$168,845	$12,168	$181,013
Total	$330,545	$211,360	$71,516	$35,886	$649,307	$670,958	$49,977	$720,935
Number of cars passing over tracks	614,301	323,023	91,783	59,027	1,088,134	1,089,197	39,780	1,128,977
Number of tons passing over tracks	26,869,381	13,165,689	3,910,225	3,161,702	47,105,997	47,160,147	1,549,778	48,709,925
Cost of maintenance and interest (5%) per car passing over tracks	$.5381	$.6543	$.7792	$.6080	$.5967	$.6160	$1.2563	$.6386
Cost of maintenance and interest (5%) per ton passing over tracks	$.0123	$.0161	$.0183	$.0113	$.0138	$.0142	$.0323	$.0148
Average tons per car	43.7	40.7	42.6	53.6	43.3	43.3	39.0	43.1
Earnings on switching wholly within plant	$1,394,561	$475,333	$126,134	$22,654	$2,018,682	$2,023,997		$2,023,997

NOTE.—"Cars passing over tracks" comprise loaded but not empty cars. "Ton" is ton of 2,000 pounds.

[File endorsement omitted.]

Industrial tracks owned and maintained by Elgin, Joliet and Eastern Railway Company

[Located on Plants of Industries]

Year 1926—Tracks and Traffic Statistics	Industries Subsidiary to the United States Steel Corporation						Outside Industries not Affiliated with the U. S. Steel Corporation	All Industries
	Gary, Ind., Plant of the Illinois Steel Company	So. Chicago, Ill., Plant of the Illinois Steel Company	Joliet, Ill., Plant of the Illinois Steel Company	Buffington, Ind., Plant of the Universal Atlas Cement Company	Total of the Four Plants: Gary, Ind.; So. Chicago, Ill.; Joliet, Ill.; Buffington, Ind.	All Plants of all Subsidiaries of the U. S. Steel Corporation		
Mileage	131.485	74.114	30.132	17.770	253.501	276.112	24.681	300.793
Cost of Tracks in Place	$1,707,992	$947,338	$354,378	$265,770	$3,275,478	$3,543,088	$260,857	$3,803,945
Cost of Tracks Per Mile	$12,990	$12,782	$11,761	$14,951	$12,921	$12,832	$10,570	$12,646
Cost of Maintenance	$270,968	$167,415	$54,084	$17,617	$510,084	$515,756	$48,521	$564,277
Interest on Cost of Tracks	$85,400	$47,367	$17,719	$13,288	$163,774	$177,154	$13,042	$190,196
Total	$356,368	$214,782	$71,803	$30,905	$673,858	$692,910	$61,563	$754,473
Number of Cars Passing over Tracks	675,073	375,402	107,076	46,322	1,203,873	1,211,661	41,684	1,253,345
Number of Tons Passing over Tracks	28,651,221	15,618,703	4,854,946	2,424,527	51,549,397	51,978,753	1,630,967	53,609,720
Cost of Maintenance and Interest (5%) Per Car Passing over Tracks	$.5279	$.5721	$.6706	$66.72	$.5597	$.5719	$1.4769	$.6020
Cost of Maintenance and Interest (5%) Per Ton Passing over Tracks	$.0125	$.0137	$.0148	$.0128	$.0131	$.0133	$.0378	$.0141
Average Tons per Car	42.4	41.6	45.3	52.3	42.8	42.9	39.1	42.8
Earnings on Switching Wholly Within Plant	$1,529,005	$504,389	$131,187	$18,226	$2,182,807	$2,188,427		$2,188,427

NOTE.—"Cars Passing over Tracks" comprise loaded but not empty cars. "Ton" is ton of 2,000 pounds.

[File endorsement omitted.]

Defendant's exhibit 20

Industrial tracks owned and maintained by Elgin, Joliet and Eastern Railway Company

[Located on Plants of Industries]

Year 1930—Tracks and Traffic Statistics	Industries Subsidiary to the United States Steel Corporation						Outside Industries not Affiliated with the U. S. Steel Corporation	All Industries
	Gary, Ind., Plant of the Illinois Steel Company	So. Chicago, Ill., Plant of the Illinois Steel Company	Joliet, Ill., Plant of the Illinois Steel Company	Buffington, Ind., Plant of the Universal Atlas Cement Company	Total of the Four Plants: Gary, Ind.; So. Chicago, Ill.; Joliet, Ill.; Buffington, Ind.	All Plants of all Subsidiaries of the U. S. Steel Corporation		
Mileage	153.632	77.378	30.132	17.405	278.547	302.531	25.198	327.729
Cost of Tracks in Place	$2,090,263	$1,023,668	$355,749	$261,736	$3,740,416	$4,014,459	$270,361	$4,284,820
Cost of Tracks Per Mile	$13,664	$13,229	$11,807	$15,039	$13,428	$13,270	$10,730	$13,074
Cost of Maintenance	$237,523	$160,375	$63,103	$18,497	$479,498	$499,165	$46,151	$545,316
Interest on Cost of Tracks	$104,963	$51,183	$17,787	$13,087	$187,020	$200,723	$13,518	$214,241
Total	$342,486	$211,558	$80,890	$31,584	$666,518	$699,888	$59,669	$759,557
Number of Cars Passing over Tracks	522,612	343,862	75,892	40,046	982,412	985,135	31,743	1,016,878
Number of Tons Passing over Tracks	22,372,995	14,688,282	3,496,027	2,118,686	42,675,990	42,837,242	1,160,469	43,997,711
Cost of Maintenance and Interest (5 percent) Per Car Passing over Tracks	$.6197	$.6152	$1.0657	$.7887	$.6785	$.7104	$1.8798	$.7469
Cost of Maintenance and Interest (5 percent) Per Ton Passing over Tracks	$.0153	$.0144	$.0231	$.0149	$.0156	$.0163	$.0514	$.0173
Average Tons per Car	42.8	42.7	46.1	52.9	43.4	43.5	36.6	43.3
Earnings on Switching Wholly Within Plant	$1,293,688	$439,365	$105,153	$7,615	$1,845,821	$1,853,706		$1,853,706

NOTE.—"Cars Passing over Tracks" comprise loaded but not empty cars. "Ton" is ton of 2,000 pounds.

[File endorsement omitted.]

256

Defendant's Exhibit 21

Industrial tracks owned and maintained by Elgin, Joliet and Eastern Railway Company

[Located on plants of industries]

Average Year of 5-Year Period (1926 to 1930, Incl.)—Tracks and Traffic Statistics	Industries Subsidiary to the United States Steel Corporation						Outside Industries not Affiliated with the U. S. Steel Corporation	All Industries
	Gary, Ind., Plant of the Illinois Steel Company	So. Chicago, Ill., Plant of the Illinois Steel Company	Joliet, Ill., Plant of the Illinois Steel Company	Buffington, Ind., Plant of the Universal Atlas Cement Company	Total of the Four Plants: Gary, Ind.; So. Chicago, Ill.; Joliet, Ill.; Buffington, Ind.	All Plants of all Subsidiaries of the U. S. Steel Corporation		
Mileage	132.022	71.393	30.168	17.898	251.481	272.352	24.175	296.527
Cost of Tracks in Place	$1,726,744	$912,288	$353,403	$265,275	$3,257,710	$3,504,733	$249,684	$3,754,417
Cost of Tracks Per Mile	$13,079	$12,778	$11,714	$14,820	$12,954	$12,868	$10,328	$12,661
Cost of Maintenance	$251,482	$156,203	$56,088	$19,721	$483,494	$493,588	$43,000	$536,588
Interest on Cost of Tracks	$86,337	$45,614	$17,670	$13,264	$162,885	$175,237	$12,484	$187,721
Total	$337,819	$201,817	$73,758	$32,985	$646,379	$668,825	$55,484	$724,309
Number of Cars Passing over Tracks	595,975	332,696	92,810	58,396	1,079,877	1,082,878	41,240	1,124,118
Number of Tons Passing over Tracks	25,892,167	13,804,118	4,082,797	3,208,858	46,987,440	47,150,551	1,609,172	48,759,723
Cost of Maintenance and Interest (5%) Per Car Passing over Tracks	$.5668	$.6066	$.7947	$.5648	$.5986	$.6176	$1.3454	$.6443
Cost of Maintenance and Interest (5%) Per Ton Passing over Tracks	$.0130	$.0146	$.0181	$.0103	$.0137	$.0142	$.0345	$.0149
Average Tons Per Car	43.4	41.5	43.9	54.9	43.5	43.5	39.0	43.3
Earnings on Switching Wholly Within Plant	$1,361,827	$458,753	$126,055	$17,107	$1,963,742	$1,970,943		$1,970,943

NOTE.—"Cars Passing over Tracks" comprise loaded but not empty cars. "Ton" is ton of 2,000 pounds.

257 *Defendant's Exhibit 22*

[File endorsement omitted.]

Carloads shipped by Illinois Steel Co. via Elgin, Joliet and Eastern Railway

[Includes Road Haul Traffic only]

Plant	Year				
	1926	1927	1928	1929	1930
Joliet	22,298	14,949	17,192	27,798	18,092
South Chicago	74,402	75,758	74,154	104,615	113,266
Gary	114,284	109,904	115,834	113,733	74,647
Total	210,984	200,611	207,180	246,146	206,005

Defendant's Exhibit 27

[File endorsement omitted.]

Elgin, Joilet and Eastern Railway Company

	1926	1927	1928	1929	1930	Total	Average for 5 years
Amount expended for maintenance and operation	17, 275, 369. 37	17, 000, 308. 00	16, 820, 060. 40	17, 096, 232. 81	15, 573, 475. 45	83, 765, 446. 03	16, 753, 089. 21
Amounts expended charged to Capital Account	546, 316. 94	435, 470. 51	357, 204. 34	1, 348, 177. 82	1, 910, 755. 74	4, 597, 925. 35	919, 585. 07
Total Expenditures	17, 821, 686. 31	17, 435, 778. 51	17, 177, 264. 74	18, 444, 410. 63	17, 484, 231. 19	88, 363, 371. 38	17, 672, 674. 28
Amount expended on appropriations upon which the recommendation of the Steel Corporation was obtained	317, 389. 93	199, 500. 92	251, 062. 17	1, 070, 090. 53	1, 315, 773. 81	3, 153, 817. 36	630, 763. 47
Percent of total expenditures which are recommended by U. S. Steel Corporation	1. 78%	1. 14%	1. 46%	5. 80%	7. 53%	3. 57%	3. 57%

Relation of appropriations recommended by the Steel Corporation to the total appropriations upon which expenditures were made for improvements to properties of the Elgin, Joliet and Eastern Railway Company

Year	Number of appropriations recommended by U. S. Steel Corporation	Number of appropriations not submitted for recommendation to the U. S. Corporation	Total appropriations	Percentage of recommended appropriations to total	Year	Number of appropriations recommended by U. S. Steel Corporation	Number of appropriations not submitted for recommendation to the U. S. Corporation	Total appropriations	Percentage of recommended appropriations to total
1926	26	251	277	9. 39%	1929	32	152	184	17. 39%
1927	27	240	267	10. 11%	1930	40	160	200	20. 00%
1928	22	177	199	11. 06%	Total	147	980	1, 127	13. 04%

259 *Defendant's Exhibit 28*

[File endorsement omitted.]

Elgin, Joliet and Eastern Railway Company, Year 1917—Cost of mine run coal purchased from United States Fuel Company

	Cost at mine	Cost per ton to haul (.005 per ton mile)	Cost at destination
1st quarter:			
Joliet	$1.22	$.7527	$1.9727
Waukegan	1.22	1.1299	2.3499
Porter	1.22	.799	2.019
Gary	1.22	.7481	1.9681
So. Chicago	1.22	.80995	2.02995
2nd quarter:			
Joliet	1.80	.7527	2.5527
Waukegan	1.80	1.1299	2.9299
Porter	1.80	.799	2.599
Gary	1.80	.7481	2.5481
So. Chicago	1.80	.80995	2.60995
3rd quarter:			
Joliet	2.00	.7527	2.7527
Waukegan	2.00	1.1299	3.1299
Porter	2.00	.799	2.799
Gary	2.00	.7481	2.7481
So. Chicago	2.00	.80995	2.80995
4th quarter:			
Joliet	1.95	.7527	2.7027
Waukegan	1.95	1.1299	3.0799
Porter	1.95	.799	2.749
Gary	1.95	.7481	2.6981
So. Chicago	1.95	.80995	2.75995

260 *Defendant's Exhibit 29*

[File endorsement omitted.]

Elgin, Joliet and Eastern Railway Company, year 1917—estimated cost of purchasing mine run coal from other than subsidiary companies at Westville, Illinois

	Average cost as per quotation of Black Diamond Magazine	Freight charges on foreign road to E. J. & E. Junction	Cost per ton to haul on E., J. & E. (.005 per ton mile)	Cost at Destination
1st Quarter:				
Joliet	$2.73	$0.57	$0.1127	$3.4127
Waukegan	2.73	.44	.4899	3.6599
Porter	2.73	.468	.1590	3.357
Gary	2.73	.47	.1081	3.3081
So. Chicago	2.73	.47	.16995	3.36995
2nd Quarter:				
Joliet	2.62	.595	.1127	3.3277
Waukegan	2.62	.465	.1899	3.5749
Porter	2.62	.468	.1590	3.247
Gary	2.62	.47	.1081	3.1981
So. Chicago	2.62	.47	.16995	3.25995
3rd Quarter:				
Joliet	2.34	.595	.1127	3.0477
Waukegan	2.34	.465	.4899	3.2949
Porter	2.34	.55	.1590	3.049
Gary	2.34	.54	.1081	2.9881
So. Chicago	2.34	.54	.16995	3.04995
4th Quarter:				
Joliet	2.26	.66	.1127	3.0327
Waukegan	2.26	.54	.4899	3.2899
Porter	2.26	.55	.1590	2.969
Gary	2.26	.54	.1081	2.9081
So. Chicago	2.26	.54	.16995	2.96995

261 *Defendant's Exhibit 30*

[File endorsement omitted.]

Elgin, Joliet and Eastern Railway Company, year 1917—comparison of cost of mine run coal if purchased from subsidiaries during the year 1917

	Subsidiary Companies at Westville, Illinois	Other than Subsidiaries at Westville, Illinois		Subsidiary Companies at Westville, Illinois	Other than Subsidiaries at Westville, Illinois
1st Quarter:			3rd Quarter:		
Joliet	$1.9727	$3.4127	Joliet	2.7927	3.0477
Waukegan	2.3499	3.6599	Waukegan	3.1299	3.2949
Porter	2.019	3.357	Porter	2.799	3.049
Gary	1.9681	3.3081	Gary	2.7481	2.9981
So. Chicago	2.02995	3.36995	So. Chicago	2.80995	3.04995
2nd Quarter:			4th Quarter:		
Joliet	2.5527	3.3277	Joliet	2.7927	3.0327
Waukegan	2.9299	3.5749	Waukegan	3.0799	3.2899
Porter	2.599	3.247	Porter	2.749	2.999
Gary	2.5481	3.1981	Gary	2.6981	2.9081
So. Chicago	2.60995	3.25995	So. Chicago	2.75995	2.90995

Department's Exhibit 34

Partial list of terminal railroads affiliated through stock ownership with an industrial or mining corporation which is principal shipper over its line, as valued by the Interstate Commerce Commission

Name of Railroad	Authority	Date Valuation	Date Incorporation	Affiliated Interest	Commodity	Miles of Track Owned and/or Used	Valuation of Property Owned and/or Used
Alcolu Railroad Co	110 I. C. C. 83	6/30/17	Mar. 15, 1902	D. W. Alderman & Sons	Lumber	37.975	$258,000.00
Aliquippa & Southern Railroad Co	121 I. C. C. 536	6/30/16	Nov. 27, 1906	Jones & Laughlin Steel Co	Steel	24.175	1,415,407.00
Alton & Southern Railroad Co	149 I. C. C. 22	6/30/19	Aug. 1, 1913	Aluminum Co. of America	Aluminum	33.691	1,856,701.00
Apache Railway Co	43 Val. Rep. 628	12/31/27	Sept. 5, 1917	Cady Lumber Co	Lumber	76.123	1,301,784.00
Appalachian Railway Co	135 I. C. C. 560	12/31/20	July 30, 1908	Wm. Whitmer & Sons	Lumber	20.101	264,500.00
Arcadia & Betsey River Railway Co	43 Val. Rep. 141	12/31/27	Sept. 25, 1895	Arcadia Furniture Co	Furniture	19.777	235,000.00
Arcata & Mad River Railroad Co	116 I. C. C. 542	6/30/17	July 29, 1881	Northern Redwood Lumber Co	Lumber	22.991	421,200.00
Ashland Coal & Iron Railway Co	97 I. C. C. 683	6/30/16	Jan. 25, 1865	Ashland Iron & Mining Co	Mine	42.470	1,447,736.00
Atlantic Port Railway Corp	43 Val. Rep. 525	12/31/27	May 4, 1920	Submarine Boat Corp	Shipbuilding	19.230	629,160.00
Bauxite & Northern Railway Co	121 I. C. C. 474	6/30/18	Nov. 13, 1906	Aluminum Co. of America	Aluminum	4.782	111,300.00
Beaver Dam Railroad Co	116 I. C. C. 125	6/30/16	Jan. 17, 1910	Smethport Extract Co		1.515	41,630.00
Berlin Mills Railway	43 Val. Rep. 768	12/31/27	Not Inc	Brown Company	Lumber, Pulp and Paper	18.430	718,000.00
Bessemer & Lake Erie Railroad Co	34 Val. Rep. 745	6/30/16	Dec. 31, 1900	United States Steel Corporation	Iron Ore-Coal	16.604	10,233,300.00
(The Pittsburg Bessemer & Lake Erie Railroad Co.).			Jan. 18, 1897			505.029	27,404,801.00
(The Meadville, Conneaut Lake & Linesville Railroad Co.).			June 23, 1891			34.417	730,000.00
Bevier & Southern Railroad Co	110 I. C. C. 1	6/30/18	May 5, 1898	Central Coal & Coke Co	Coal-Coke	10.585	217,550.00
Big Sandy & Cumberland Railroad Co. (Knox Creek Railway Co.).	110 I. C. C. 828	6/30/17	Jan. 25, 1900	W. M. Ritter Lumber Co	Lumber	35.703	319,096.00
Big Sandy & Kentucky River Ry. Co	125 I. C. C. 517	6/30/18	Sept. 10, 1912	W. H. Dawkins Lumber Co	Lumber	10.146	123,302.00
Bingham & Garfield Railway Co	106 I. C. C. 450	6/30/16	July 8, 1908	Utah Copper Co	Mine	60.569	5,894,183.00
Birmingham Southern Railroad Co	29 Val. Rep. 628	6/30/17	Feb. 17, 1899	Tennessee Coal, Iron & Railroad Co	Iron-Steel	89.567	3,797,492.00
Blaney & Southern Railway Co	97 I. C. C. 707	6/30/16	Oct. 18, 1902	Members of Wisconsin Land & Lumber Co.	Lumber	7.913	56,000.00
Blytheville, Burdette & Mississippi River Railway Co.	108 I. C. C. 1	6/30/16	Apr. 17, 1906	Three States Lumber Co	Lumber	24.380	120,480.00
Blytheville, Leachvi'le & Arkansas Southern Railroad Co.	125 I. C. C. 36	6/30/17	May 19, 1908	Herman Paepcke, President and also President of Chicago Mill & Lumber Company.	Lumber	34.574	424,215.00
Bonhomie and Hattiesburg Southern Railroad Co.	43 Val. Rep. 25	12/31/28	Sept. 10, 1923	"by the family of W. S. F. Tatum, who also control the Tatum Lumber Co."	Sawmill	30.925	685,116.00
Boyne City, Gaylord & Alpena Railroad Company.	119 I. C. C. 778	6/30/18	Mar. 28, 1905	W. H. White and others of the W. H. White Lumber Co.	Lumber	125.323	1,716,732.00
Brimstone R. R. & Canal Co	141 I. C. C. 445	6/30/18	Aug. 25, 1905	Union Sulphur Company	Mine	9.232	187,072.00
Brookings & Peach Orchard R. R. Co	110 I. C. C. 672	6/30/18	May 16, 1908	Henry Quellmalz Lumber & Mfg. Co	Lumber	3.657	15,195.00

Partial list of terminal railroads affiliated through stock ownership with an industrial or mining corporation which is principal shipper over its line, as valued by the Interstate Commerce Commission—Continued

Name of Railroad	Authority	Date Valuation	Date Incorporation	Affiliated Interest	Commodity	Miles of Track Owned and/or Used	Valuation of Property Owned and/or Used
Buffalo Creek & Gauley Railroad Co	121 I. C. C. 271	6/30/18	Apr. 7, 1904	Elk River Coal & Lumber Co	Lumber-Mine (coal)	21.504	$910,697.00
Butler County Railroad Co	97 I. C. C. 602	6/30/16	Sept. 1, 1905	Brooklyn Cooperage Co. (American Sugar Refining Co.)		59.739	910,396.00
Butte, Anaconda & Pacific Ry. Co	141 I. C. C. 747	12/31/20	Sept. 30, 1892	Anaconda Copper Mining Company	Mine	164.722	7,334,235.00
Cache Valley Railroad Co	106 I. C. C. 467	6/30/17	May 9, 1902	Lesser Goldman Cotton Co		11.588	73,227.00
Caddo & Choctaw Railroad Co	108 I. C. C. 89	6/30/16	Apr. 19, 1907	Officers of Caddo River Lumber Co	Lumber	14.018	238,161.00
California Western Railroad & Navigation Company.	141 I. C. C. 797	6/30/17	June 30, 1905	Union Lumber Company	Lumber	47.444	1,797,400.00
Camino, Placerville and Lake Tahoe Railroad Co.	43 Val. Rep. 300	12/31/27	Dec. 23, 1911	Michigan-California Lumber Co	Lumber	8.939	160,000.00
Carbon County Railway Co	43 Val. Rep. 65	12/31/27	July 29, 1922	Columbia Steel Co	Iron-Steel	5.216	366,000.00
Carlton & Coast Railroad Co	144 I. C. C. 160	6/30/17	Feb. 24, 1910	Carlton Consolidated Lumber Co	Lumber	16.411	373,603.00
Carolina Western Railroad	43 Val. Rep. 610	12/31/28	Nov. 17, 1923	Camp Manufacturing Co	Sawmill	7.146	65,000.00
Cement, Tolenas & Tidewater R. R. Co	108 I. C. C. 555	6/30/16	Oct. 3, 1911	Pacific Portland Cement Co	Cement	5.342	112,002.00
Central Railway of Arkansas	103 I. C. C. 274	6/30/16	Jan. 31, 1906	Fort Smith Lumber Co	Lumber	15.18	201,924.00
Chaffee Railroad Co	43 Val. Rep. 925	12/31/27	Jan. 7, 1918	"Same interests that control Manor Coal Co."	Mining	3.741	90,000.00
Chattahoochee Valley Railway Co	106 I. C. C. 539	6/30/17	June 7, 1900	West Point Manufacturing Co	"Cotton Mills"	48.071	589,360.00
Chestnut Ridge Railway Co	149 I. C. C. 58	6/30/18	Jan. 23, 1902	New Jersey Zinc Co	Zinc, Sand, Coal	14.635	363,913.00
Cheswick & Harmar Railroad Co	114 I. C. C. 179	6/30/16	Mar. 25, 1901	Equitable Coke Co	Mine	6.553	150,250.00
Chicago & Calumet River R. R. Co	143 I. C. C. 814	6/30/19	Aug. 12, 1901	Western Steel Car & Foundry Co	Iron-Steel	19.208	207,000.00
Chicago, West Pullman & Southern Railroad Co.	36 Val. Rep. 814	6/30/19	Oct. 28, 1909	International Harvester Co., "individuals for the benefit of."	Farm Implements	10.353	508,000.00
Christie & Eastern Railway Co	114 I. C. C. 116	6/30/19	Feb. 3, 1917	Officers of company associated with Peavy-Wilson Lumber Co.	Lumber	10.595	141,520.00
Cimarron & Northwestern Railway Co	106 I. C. C. 560	6/30/16	Jan. 21, 1907	Continental Tie & Lumber Co	Lumber	22.711	226,810.00
Clarendon & Pittsford Railroad Co	103 I. C. C. 263	6/30/17	Sept. 10, 1885	Vermont Marble Co	Marble	25.168	490,212.00
Colorado & Southeastern Railroad Co	125 I. C. C. 251	6/30/18	Aug. 4, 1909	The Victor American Fuel Co	Mine	16.257	283,950.00
Colorado & Wyoming Railway Co	130 I. C. C. 446	6/30/18	May 9, 1899	Colorado Fuel & Iron Co	Iron-Steel	169.017	3,509,523.00
Columbia & Cowlitz Railway Co	43 Val. Rep. 583	12/31/28	Apr. 10, 1925	Weyerhaeuser Timber Co	Lumber	9.040	690,000.00
Combs, Cass & Eastern Railroad Co	114 I. C. C. 568	6/30/18	Jan. 22, 1915	J. H. Phipps Lumber Co	Lumber	16.003	277,946.00
Condon, Kinzua & Southern Railroad Co	43 Val. Rep. 551	12/31/28	May 8, 1928	Kinzua Pine Mills Co	Lumber	21.539	380,000.00
Cornwall Railroad Co	135 I. C. C. 653	6/30/17	May 25, 1850	Lackawanna Iron & Steel Co	Iron-Steel	25.828	772,000.00
Crittenden Railroad Co	103 I. C. C. 18	6/30/16	July 19, 1905	Crittenden Lumber Co	Lumber	31.507	176,680.00
Crystal River & San Juan Railroad Co. (The Crystal River Railroad Co.).	43 Val. Rep. 331	12/31/27	Oct. 24, 1906	Colorado Consolidated Yule Marble Co	Marble	29.639	948,547.00
Cumberland & Pennsylvania R. R. Co	114 I. C. C. 730	6/30/18	Mar. 4, 1850	The Consolidated Coal Co	Mine	87.249	4,110,200.00
Cuyahoga Valley Railway Co	114 I. C. C. 239	6/30/17	May 18, 1905	Cleveland Furnace Co		8.688	233,003.00
Death Valley Railroad Co	103 I. C. C. 27	6/30/15	Jan. 26, 1914	Borax Consolidated, Ltd	Mine (Borate)	23.070	360,546.00
Delray Connecting Railroad Co	106 I. C. C. 192	6/30/18	Mar. 24, 1904	The Solvay Process Co The Semet-Solvay Co		14.354	1,343,310.00

Delray Terminal Railroad Co	97 I. C. C. 248	6/30/18	Feb. 7, 1905	Detroit Edison Company	Coal	1.246	157,264.00
Dent's Run Railroad Co	110 I. C. C. 239	6/30/17	Sept. 15, 1903	Certain stockholders of Bennetts Branch Coal Co.	Mine (Coal)	7.259	74,849.00
Des Moines Union Railway Co	141 I. C. C. 839	6/30/18	Dec. 10, 1884	F. M. Hubbell Sons Company		36.982	4,349,529.00
Dexter & Northern Railroad Co	121 I. C. C. 675	6/30/19	July 23, 1908	By individuals connected with Dexter Sulphite Pulp & Paper Co.		0.881	36,876.00
Donora Southern Railroad Co	121 I. C. C. 34	6/30/17	Apr. 2, 1902	Union Steel Co	Steel-Wire	8.616	498,000.00
Dover & Southbound Railroad	103 I. C. C. 39	6/30/14	Not Inc	Operated by Goldsboro Lumber Co. (which is authorized to construct, own and operate railroads).	Lumber	26.354	170,000.00
Duluth & Iron Range Rail Road Co	31 Val. Rep. 159	6/30/19	Dec. 21, 1874	Minnesota Iron Co	Iron-Steel	545.683	28,790,549.00
Duluth & Northeastern Railroad Co	119 I. C. C. 750	6/30/19	Sept. 10, 1898	{Cloquet Lumber Co {Northern Lumber Co	Lumber	76.175	1,006,292.00
Duluth, Missabe and Northern Railway Co.	26 Val. Rep. 387	6/30/19	June 12, 1891	United States Steel Corporation	on Ore	645.350	42,840,271.00
(Spirit Lake Transfer Railway Co.)			Oct. 11, 1907			28.206	2,100,000.00
(Interstate Transfer Railway Co.)			July 26, 1907			13.364	1,090,000.00
Durham & South Carolina R. R. Co	84 I. C. C. 313	6/30/17	Jan. 20, 1905	Chatham Lumber Co	Lumber	42.663	460,796.00
East Erie Commercial Railroad	43 Val. Rep. 365	12/31/27	Oct. 7, 1907	W. W. Trench	Manufacturing (Electric).	10.358	584,570.00
East Jersey R. R. & Terminal Co	114 I. C. C. 441	6/30/16	Mar. 11, 1901	Tidewater Oil Co	Oil Refining	2.214	548,390.00
East Jordan & Southern R. R. Co	110 I. C. C. 353	6/30/18	July 9, 1901	East Jordan Lumber Co	Lumber	55.800	401,738.00
East St. Louis Junction R. R. Co	149 I. C. C. 152	6/30/19	Oct. 21, 1918	The St. Louis National Stock Yards	Pack. House Prod	26.139	1,639,287.00
East Tennessee & Western North Carolina Railroad Company.	119 I. C. C. 552	6/30/16	Mar. 4, 1879	Cranberry Iron & Coal Co	Mine	48.994	1,679,287.00
East Texas and Gulf Railway Co	43 Val. Rep. 1	12/31/27	Aug. 1, 1917	Lodwick Lumber Co	Logging	5.274	48,434.00
Edgemoor & Monetta Railway	114 I. C. C. 294	6/30/18	Mar. 24, 1902	Manetta Cotton Mills	Cotton Prod	2.302	24,348.00
Elkin & Alleghany Railway Co	103 I. C. C. 174	6/30/15	Feb. 23, 1907	John A. Mills and John A. Mills Construction Company.		16.371	335,080.00
Etna & Montrose Railroad Co	130 I. C. C. 277	6/30/18	Apr. 27, 1896	Carnegie Steel Company	Iron-Steel	4.427	195,000.00
Euclid Railroad Co	114 I. C. C. 303	6/30/18	Oct. 11, 1883	The Cleveland Stone Co	Stone Prod	1.963	29,861.00
Fairchild & North-Eastern Ry. Co	103 I. C. C. 453	6/30/16	July 7, 1898	N. C. Foster Lumber Co	Lumber	71.466	884,746.00
Fellsmere Railroad	103 I. C. C. 201	6/30/16	Not Inc	Fellsmere Farms Co	Phosphate, etc	12.936	110,000.00
Fore River Railroad Corporation	43 Val. Rep. 193	12/31/27	Jan. 6, 1919	Bethlehem Steel Corporation	Iron-Steel	9.162	361,250.00
Fourche River Valley & Indian Territory Railway Co.	103 I. C. C. 208	6/30/16	Oct. 28, 1905	Fourche River Lumber Co	Lumber	21.531	257,460.00
Garden City Western Ry. Co	103 I. C. C. 601	6/30/16	May 29, 1915	Garden City Sugar & Land Co	Sugar Beets, etc	15.189	192,099.00
Garyville Northern Railroad Co	108 I. C. C. 817	6/30/19	June 4, 1915	Walter K. Fifield of Lyon Lumber Co	Lumber	21.485	333,896.90
Gould Southwestern Railway Co	114 I. C. C. 626	6/30/18	Nov. 24, 1906	Newhouse Mill & Lumber Company	Lumber	19.266	140,264.00
Grafton & Upton Railroad Co	125 I. C. C. 78	6/30/16	Oct. 22, 1873	Draper Corporation	Looms, etc	22.664	521,508.00
Great Western Railway Co	125 I. C. C. 674	6/30/18	Oct. 17, 1901	The Great Western Sugar Co	Agricultural Prod	110.736	1,766,000.00
Greenville and Northern Railway Co	43 Val. Rep. 215	12/31/28	Jan. 3, 1920	Saluda Land & Lumber Co	Lumber	17.121	450,278.00
Groveton, Lufkin & Northern Ry. Co	106 I. C. C. 731	6/30/19	May 15, 1908	J. S. Joyce, who with associates control Trinity County Lumber Co.	Lumber	25.497	292,090.00
Gulf & Sabine River Railroad Co	121 I. C. C. 775	6/30/19	Sept. 1, 1906	Principal officers and some of its directors are also officers and directors of the Gulf Lumber Company.	Lumber	22.929	243,000.00
Hannibal Connecting Railroad Co	108 I. C. C. 510	6/30/18	July 5, 1902	Atlas Portland Cement Co	Cement	7.672	109,056.00
Hartford Eastern Railway Co	106 I. C. C. 777	6/30/17	May 14, 1915	Rucker Brothers	Lumber-Logs	44.621	1,874,816.00
Helena Southwestern Railroad Co	43 Val. Rep. 228	12/31/27	Nov. 7, 1913	Controlled by the executors of the estate of a deceased owner of the Chicago Mill and Lumber Co.	Lumber	5.570	198,085.00

Partial list of terminal railroads affiliated through stock ownership with an industrial or mining corporation which is principal shipper over its line, as valued by the Interstate Commerce Commission—Continued

Name of Railroad	Authority	Date Valuation	Date Incorporation	Affiliated Interest	Commodity	Miles of Track Owned and/or Used	Valuation of Property Owned and/or Used
Hickory Valley Railroad Co.	110 I. C. C. 251	6/30/17	May 18, 1887	Wheeler & Dusenbury	Lumber	6.464	$75,900.00
Illinois Northern Railway	29 Val. Rep. 210	6/30/18	May 15, 1901	International Harvester Co	Machinery	16.071	1,668,865.00
Indian Valley Railroad Co	43 Val. Rep. 162	12/31/27	June 30, 1916	Engles Copper Mining Co	Mine (Copper)	24.103	645,000.00
Intermountain Railway Co.	110 I. C. C. 299	6/30/16	July 19, 1907	Boise-Payette Lumber Co	Lumber	31.872	991,127.00
Interstate Railroad Co	103 I. C. C. 795	6/30/16	Feb. 18, 1896	Virginia Coal & Iron Co	Mine	51.694	1,835,220.00
Johnstown & Stony Creek Railroad Co.	125 I. C. C. 306	6/30/18	Jan. 19, 1888	Lomin Steel Co	Iron-Steel	4.506	218,054.00
Kanawha Central Railway Co.	43 Val. Rep. 823	12/31/27	Jan. 22, 1906	Black Band Consolidated Coal Co	Coal	6.213	87,000.00
Kansas City Connecting R. R. Co.	149 I. C. C. 1	6/30/19	June 30, 1914	Kansas City Stock Yards Co	Pack. House Prod	9.029	1,710,000.00
Kelly's Creek Railroad Co.	119 I. C. C. 831	6/30/19	Oct. 20, 1916	Kanawha & Hocking Coal & Coke Co	Coal-Coke	8.689	116,281.00
Kelly's Creek & Northwestern R. R. Co.	114 I. C. C. 720	6/30/18	May 9, 1903	Kellys Creek Colliery Co	Mine	8.175	114,210.00
Kentucky, Rockcastle & Cumberland Railroad Co.	43 Val. Rep. 205	12/31/27	Dec. 3, 1913	By H. B. Jones, Vice-Pres., Turkey Foot Lumber Co.	Lumber	7.930	123,575.00
Kentwood, Greensburg & South Western Railroad Co.	103 I. C. C. 563	6/30/16	Feb. 11, 1905	F. C. A. Denkman Co., which also controls the Amos Kent Lumber & Brick Company.	Lumber-Brick	16.010	138,834.00
Lake Champlain & Moriah Railroad Co.	106 I. C. C. 99	6/30/16	Dec. 4, 1867	½ Port Henry Iron Ore Co ½ Witherbee, Sherman & Co	Mine	22.543	700,000.00
Lake Providence, Texarkana & Western Railroad Co.	110 I. C. C. 419	6/30/19	Sept. 18, 1911	E. Sondheimer Co	Lumber	5.138	36,791.00
Lakeside & Marblehead Railroad Co	130 I. C. C. 714	6/30/17	Aug. 17, 1886	Kelly Island Lime & Transport Co	Quarry Prod	25.558	424,011.00
Lake Terminal Railroad Co.	133 I. C. C. 497	6/30/19	Sept. 14, 1895	United States Steel Corporation	Iron-Steel	41.461	2,016,458.00
L'Anguille River Railway Co.	103 I. C. C. 620	6/30/18	July 15, 1902	By individuals who control Miller Lumber Co.	Lumber	4.890	16,538.00
Laona & Northern Railway Co.	110 I. C. C. 662	6/30/16	June 5, 1902	By individuals connected with R. Connor Company.	Lumber	19.603	190,530.00
LaSalle & Bureau County Railroad Co.	141 I. C. C. 73	6/30/17	Aug. 30, 1890	Matthiessen & Hegeler Zinc Co. principal industry served (see also 57 I. C. C. 173).	Zinc	9.370	163,700.00
Linville River Railway Co.	103 I. C. C. 160	6/30/16	Aug. 29, 1899	Cranberry Iron & Coal Co	Mine	14.250	249,709.00
Lithonia & Arabia Mountain Ry. Co.	106 I. C. C. 141	6/30/16	Oct. 29, 1913	Louis Drach, who is principal owner of Arabia Granite Co.	Stone Prod	5.510	51,858.00
Little River Railroad Co.	103 I. C. C. 611	6/30/16	Nov. 21, 1901	Little River Lumber Co	Lumber	13.958	226,961.00
Lorain & Southern Railroad Co.	125 I. C. C. 234	6/30/17	Apr. 25, 1903	The Ohio Quarries Co	Stone	5.846	66,235.00
Loranger, Louisiana & Northeastern Railroad Company.	116 I. C. C. 499	6/30/18	Feb. 12, 1916	Genesee Lumber Company	Lumber	10.244	75,551.00
Ludington & Northern Railway Co.	116 I. C. C. 199	6/30/19	Mar. 12, 1895	Stearns Salt & Lumber Co	Lumber	11.706	77,700.00
McKeesport Connecting Railroad Co.	125 I. C. C. 125	6/30/17	Mar. 20, 1889	National Tube Co	Pipe	21.880	1,143,000.00
Magma Arizona Railroad Co.	103 I. C. C. 658	6/30/17	Oct. 13, 1914	Magma Copper Co	Mine	31.678	319,560.00
Manufacturers' Junction Railway Co.	26 Val. Rep. 607	6/30/19	Jan. 28, 1903	Western Electric Co	Electric. Mfrs	6.546	820,811.00
Marianna & Blountstown Railroad Co.	119 I. C. C. 581	6/30/17	June 8, 1909	Blountstown Mfg. Co		30.151	211,440.00
Marion & Rye Valley Railway Co.	106 I. C. C. 15	6/30/16	Feb. 3, 1900	U. S. Spruce Lumber Co	Lumber	21.922	347,467.00
Mascot & Western Railroad Co.	106 I. C. C. 611	6/30/17	July 2, 1914	Mascot Copper Company	Mine	16.433	180,067.00

Massena Terminal Railroad Co.	25 Val. Rep. 181	6/30/19	May 1, 1900	"It is controlled through stock ownership of the entire capital stock, by the St. Lawrence Securities Co., which in turn is controlled by the Aluminum Co. of America."	Aluminum	2.996	233,420.00
Massillon Belt Railway Co.	106 I. C. C. 147	6/30/16	May 26, 1909	The Russell & Co. & The Russell Engine Company.		0.420	19,123.00
Middle Creek Railroad Co.	43 Val. Rep. 889	12/31/27	Dec. 18, 1925	Middle West Utilities Co.		6.022	129,000.00
Milstead Railroad Company	106 I. C. C. 67	6/30/16	June 18, 1909	Milstead Mfg. Company		3.108	31,924.00
Minarets and Western Railway Co.	43 Val. Rep. 442	12/31/27	Mar. 19, 1921	"By same interests that control Sugar Pine Lumber Co."	Lumber	47.893	3,061,484.00
Mineral Point & Northern Ry. Co.	106 I. C. C. 27	6/30/17	Oct. 17, 1899	Mineral Point Zinc Company	Zinc	29.640	556,927.00
Minneapolis & Rainy River Ry. Co	133 I. C. C. 594	6/30/15	July 18, 1904	Itaska Lumber Company	Lumber	95.302	1,123,004.00
Mississippi & Skuna Valley Railroad Co.	43 Val. Rep. 254	12/31/28	June 1, 1925	"controlled by the E. L. Bruce family * * * who also control the E. L. Bruce Co. * * *"	Sawmill	25.426	395,000.00
Mississippi & Western Railroad Co.	43 Val. Rep. 175	12/31/28	Feb. 19, 1917	Ingham Lumber Co. & Hutchinson-Moore Lumber Co.	Lumber	11.869	101,000.00
Mississippi Eastern Railway Co.	106 I. C. C. 293	6/30/15	July 6, 1903	Mississippi Lumber Co.	Lumber	19.001	227,229.00
Missouri Southern Railroad Co.	114 I. C. C. 795	6/30/14	Feb. 23, 1884	Pennsylvania Lumber Company	Lumber	70.325	813,769.00
Mobile & Gulf Railroad Co.	43 Val. Rep. 309	12/31/28	July 1, 1925	W. P. Brown & Sons Lumber Co.	Lumber	41.051	425,000.00
Monongahela Connecting Railroad Co.	141 I. C. C. 44	6/30/19	Apr. 1, 1885	Jones & Laughlin Steel Corp.	Iron-Steel	40.201	6,236,374.00
Monson Railroad Company	106 I. C. C. 339	6/30/16	Mar. 18, 1881	The Monson Maine Slate Co.	Quarry	9.105	77,113.00
Montana Railroad	43 Val. Rep. 701	12/31/27	Apr. 5, 1915	Clarksville Coal Co.	Coal	2.682	36,000.00
Montour Railroad Co.	33 Val. Rep. 681	6/30/17	Jan. 6, 1913	Pittsburgh Coal Co.	Coal	71.242	5,105,000.00
Morehead & North Fork Railroad Co.	119 I. C. C. 363	6/30/18	Sept. 27, 1905	Clearfield Lumber Company	Lumber	28.080	638,031.00
Moscow, Camden & San Augustine Ry. Co.	106 I. C. C. 689	6/30/18	May 28, 1898	W. T. Carter of W. T. Carter & Bro.	Lumber	8.654	76,456.00
Mt. Hood Railroad Co.	106 I. C. C. 572	6/30/16	Feb. 27, 1905	Oregon Lumber Company	Lumber	26.246	507,463.00
Mt. Hope Mineral Railroad Co.	125 I. C. C. 321	6/30/18	Mar. 16, 1866	Empire Steel & Iron Co. and Thomas Iron Company.	Iron-Steel	5.512	108,300.00
Muncie & Western Railroad Co.	106 I. C. C. 318	6/30/16	May 12, 1902	Principal stockholders of Ball Bros. Glass Mfg. Co.	Glass	3.930	44,044.00
Nashville and Atlantic Railroad Co.	43 Val. Rep. 671	12/31/28	June 15, 1921	Rocky River Coal & Lumber Co.	Coal-Lumber	13.634	192,130.00
Natchez, Columbia & Mobile R. R. Co.	103 I. C. C. 547	6/30/16	June 24, 1892	T. B. Davis, who is president of Butterfield Lumber Company.	Lumber	29.986	475,536.00
Natchez, Urania & Ruston Railway Co.	121 I. C. C. 166	6/30/19	Mar. 2, 1899	Urania Lumber Co. only industry served.	Lumber	5.958	31,500.00
Nevada Copper Belt Railroad Company	84 I. C. C. 427	6/30/17	Mar. 22, 1909	Nevada Douglas Consolidated Copper Co.	Mine	47.236	724,112.00
Nevada Northern Railway Company	84 I. C. C. 523	6/30/17	June 1, 1905	Nevada Consolidated Copper Co.	Mine	193.335	3,404,900.00
Newaukum Valley Railroad Co.	43 Val. Rep. 857	12/31/27	May 25, 1914	Carlisle Lumber Co.	Lumber	13.667	410,000.00
Newburgh & South Shore Railway Co.	125 I. C. C. 857	6/30/17	June 10, 1899	American Steel & Wire Co.	Wire products	42.574	3,614,396.00
New Orleans, Natalbany & Natchez Ry. Co.	108 I. C. C. 232	6/30/16	June 5, 1902	Individuals who control Natalbany Lumber Company.	Lumber	35.778	381,619.00
New Mexico Midland Railway Co.	84 I. C. C. 443	6/30/16	June 11, 1904	Carthage Fuel Company	Mine	13.611	140,265.00
Northampton & Bath Railroad Co.	149 I. C. C. 244	6/30/18	July 7, 1902	Atlas Portland Cement Co.	Cement	10.118	335,000.00
North Louisiana & Gulf Railroad Co.	116 I. C. C. 864	6/30/18	Jan. 22, 1906	Hunt-Hodge Lumber Co.	Lumber	27.730	186,733.00
Northwestern Coal Railway Co.	106 I. C. C. 678	6/30/15	Dec. 21, 1892	Pittsburgh Coal-Dock & Wharf Co.	Mine	3.325	77,500.00
Oakdale & Gulf Railway Company	110 I. C. C. 532	6/30/19	Feb. 7, 1916	Individuals connected with Forest Lumber Co. and Bowman-Hicks Lumber Company.	Lumber	12.468	79,530.00
Oklahoma & Rich Mountain Railroad Co.	43 Val. Rep. 75	12/31/27	Sept. 28, 1925	Dierks Lumber & Coal Co. (Pine Valley Lumber Co.)	Sawmill	18.162	245,818.00

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Name of Railroad	Authority	Date Valuation	Date Incorporation	Affiliated Interest	Commodity	Miles of Track Owned and/or Used	Valuation of Property Owned and/or Used
Oklahoma City Junction Railway Co	149 I. C. C. 200	6/30/19	June 19, 1909	Morris & Company	Pack. House Prod	5.503	$160,649.00
Oneida & Western Railroad Co	106 I. C. C. 479	6/30/18	Oct. 29, 1912	Tennessee Stave & Lumber Co	Lumber	27.770	625,000.00
Ontonagon Railroad Company	121 I. C. C. 235	6/30/18	Oct. 27, 1904	C. H. Worcester, who, with associates, controls Greenwood Lumber Co.	Lumber	6.597	43,715.00
Ouachita & Northwestern Railroad Co	106 I. C. C. 667	6/30/16	May 29, 1905	Louisiana Central Lumber Co	Lumber	40.905	354,944.00
Outer Harbor Terminal Railway Co	43 Val. Rep. 185	12/31/27	July 9, 1927	Outer Harbor Dock & Wharf Co		6.292	101,000.00
Owasco River Railway	125 I. C. C. 607	6/30/17	June 2, 1881	International Harvester Corp	Mchry	2.702	180,287.00
Patapsco & Back Rivers Railroad Co	43 Val. Rep. 899	12/31/27	Dec. 26, 1916	Bethlehem Steel Corp	Iron-Steel	53.505	2,205,000.00
Peoria, Hanna City and Western Railway Co.	44 Val. Rep. 871	12/31/27	Aug. 31, 1918	"By the same interests that control the Crescent Coal Co."	Mine (Coal)	5.546	237,500.00
Peru, LaSalle & Deer Park Railroad Co	43 Val. Rep. 590	12/31/27	Dec. 8, 1905	Illinois Zinc Co	Zinc	3.039	65,000.00
Philadelphia, Bethlehem & New England Railroad Company.	135 I. C. C. 381	6/30/17	Apr. 12, 1910	Bethlehem Steel Corporation	Iron-Steel	67.289	2,538,545.00
Pittsburgh, Allegheny & McKees Rocks Railroad Company.	114 I. C. C. 533	6/30/17	Sept. 25, 1899	Pressed Steel Car Company	Railroad car Manufacturers	18.791	1,002,459.00
Port Angeles Western Railroad Co	43 Val. Rep. 53	12/31/27	Feb. 11, 1925	Lyon, Hill & Co. (United States Spruce Production Corp.).	Spruce Lumber	43.688	2,075,000.00
Portland & Southwestern R.R. Co	114 I. C. C. 51	6/30/17	Dec. 29, 1905	Nehalem Timber & Logging Co	Lumber-Logs	12.555	330,616.00
Prescott & Northwestern R.R. Co	103 I. C. C. 484	6/30/16	Jan. 20, 1892	Principal stockholders and officials are also stockholders and officials of Ozan-Graysonia Lumber Company.	Lumber	39.330	350,152.00
Preston Railroad Co	43 Val. Rep. 455	12/31/27	July 29, 1897	Kendall Lumber Co	Lumber	4.584	155,000.00
Pullman Railroad Co	26 Val. Rep. 227	6/30/19	Aug. 24, 1906	The Pullman Company	Car Manufacturers	21.219	648,365.00
Puget Sound & Cascade Railway Co	106 I. C. C. 818	6/30/17	July 1, 1912	Clear Lake Lumber Company	Lumber	18.789	427,902.00
Ray & Gila Valley Railroad Co	108 I. C. C. 35	6/30/15	June 14, 1910	Ray Consolidated Copper Co	Mine	11.007	764,490.00
Reader Railroad	43 Val. Rep. 648	12/31/27	July 13, 1925	Mansfield Hardwood Lumber Co	Lumber	23.636	298,000.00
Red River & Gulf Railroad	119 I. C. C. 535	6/30/19	Apr. 21, 1905	Principal stockholders & directors are also officers and stockholders of Crowell & Spencer Lumber Co.	Lumber	25.795	305,300.00
Reynoldsville & Falls Creek R. R. Co	125 I. C. C. 388	6/30/17	Jan. 1, 1897	The Jefferson & Clearfield Coal & Iron Company.	Mine	37.407	432,821.00
Rio Grande, Micholithic and Northern Railway.	43 Val. Rep. 711	12/31/27	May 17, 1926	Micholithic Company	Mining	6.586	105,000.00
River Terminal Railway Co	119 I. C. C. 12	6/30/17	Dec. 8, 1909	The St. Paul Iron Mining Co	Mine	11.869	892,572.00
Rockcastle River Railway Co	121 I. C. C. 285	6/30/18	Feb. 11, 1913	Bond-Foley Lumber Company	Lumber	14.186	138,437.00
Rowlesburg & Southern Railroad Co	130 I. C. C. 620	6/30/18	Jan. 14, 1911	Stitzinger Lumber Company	Lumber	6.985	84,250.00
Sabine & Neches Valley Railway Co	43 Val. Rep. 118	12/31/27	Nov. 4, 1921	Peavey-Moore Lumber Co	Sawmill	12.981	122,400.00
St. Joseph Belt Railway Company	133 I. C. C. 523	6/30/17	July 6, 1908	St. Joseph Stock Yards Co	Pack. House Prod	23.571	441,484.00
St. Louis and Ohio River Railroad	44 Val. Rep. 856	12/31/27	Mar. 22, 1920	Aluminum Co. of America	Aluminum	16.834	922,000.00

St. Paul Bridge & Terminal Railway Co.	143 I. C. C. 375	6/30/19	Oct. 14, 1908	"The latter company, which is controlled by the same interest which control the carrier * * *" (St. Paul Union Stock Yards Co.).	Pack. House Prod.	35.281	944,248.00
Salem, Winona & Southern R. R. Co.	114 I. C. C. 283	6/30/17	May 21, 1908	Majority of capital stock held by individuals who also own majority of capital stock of Missouri Lumber and Mining Company.	Lumber	14.753	101,365.00
San Joaquin & Eastern Railroad Co.	108 I. C. C. 215	6/30/16	Mar. 16, 1912	Pacific Light & Power Company		61.411	1,148,000.00
Santa Fe Northwestern Railway Co.	43 Val. Rep. 729	12/31/27	Aug. 16, 1920	The White Pine Lumber Co.	Lumber	51.803	1,129,292.00
Saratoga & Encampment Railway Co.	125 I. C. C. 485	6/30/19	Sept. 20, 1905	Morse Bros. Machinery & Supply Co.		48.941	631,173.00
Sardis & Delta Railroad Company	108 I. C. C. 287	6/30/16	Dec. 13, 1900	Carrier Lumber & Mfg. Company	Lumber	14.379	116,000.00
Sewell Valley Railroad Co.	106 I. C. C. 236	6/30/16	Nov. 22, 1907	Meadow River Lumber Company	Lumber	42.629	655,365.00
Shelby County Railway Company	108 I. C. C. 500	6/30/18	Sept. 18, 1906	Hunter-Houck Company		8.776	135,253.00
Shreveport, Houston & Gulf R. R. Co.	97 I. C. C. 122	6/30/18	June 19, 1906	Carter-Kelly Lumber Co.	Lumber	10.189	92,578.00
Sibley, Lake Bisteneau & Southern Ry. Co.	135 I. C. C. 808	6/30/16	July 7, 1900	R. A. Long, who with associates controls	Lumber	32.678	227,662.00
(The Woodworth & Louisiana Central Railway Company).	135 I. C. C. 808	6/30/19	Dec. 8, 1900	Globe Lumber Co. R. A. Long of the Long-Bell Lumber Co.	Lumber	6.478	50,278.00
(Louisiana & Pacific Railway Co.),	135 I. C. C. 808	6/30/19	Aug. 6, 1900	The Long-Bell Lumber Co	Lumber	30.904	426,860.00
Sioux City Terminal Railway Co	31 Val. Rep. 343	6/30/18	July 2, 1907	Sioux City Stock Yards Co.	Packing House Prod.	13.132	412,741.00
Sligo & Eastern Railroad Co. (Iron County Central Railroad).	110 I. C. C. 154	6/30/17	Aug. 2, 1902	Sligo Furnace Co.		35.290	415,424.00
Smoky Mountain Railway Company	108 I. C. C. 200	6/30/15	Aug. 1, 1905	W. M. Ritter Lumber Co.	Lumber	10.215	143,794.00
South Buffalo Railway Company	31 Val. Rep. 320	6/30/17	Apr. 25, 1899	Lackawanna Steel Co.	Iron-Steel	21.152	1,833,749.00
South Manchester Railroad Company	108 I. C. C. 278	6/30/16	May 30, 1866	Cheney Brothers	Silk Manufacturers	3.251	184,425.00
Springfield Terminal Railway Co.	114 I. C. C. 493	6/30/16	Apr. 22, 1908	Jones & Adams Coal Company	Mine	4.437	60,164.00
Steelton & Highspire Railroad Co.	43 Val. Rep. 846	12/31/27	Nov. 16, 1916	Bethlehem Steel Corp.	Iron-Steel	37.557	1,210,000.00
Sterling Mountain Railway Co.	119 I. C. C. 766	6/30/18	May 18, 1864	Sterling Iron & Railway Company	Iron	9.034	130,000.00
Strouds Creek and Muddlety Railroad Co.	43 Val. Rep. 637	12/31/27	June 14, 1904	Tioga Lumber Co.	Lumber	10.911	130,000.00
Sumpter Valley Railway Company	141 I. C. C. 466	6/30/16	Aug. 18, 1890	"The Oregon Lumber Co. exercises control of the carrier through stockholders interested in both companies."	Lumber	95.151	1,609,745.00
Sumter & Chocktaw Railway Company	110 I. C. C. 405	6/30/17	July 12, 1904	E. F. Allison and others who comprise the board of directors of Allison Lumber Company.	Lumber	25.799	259,212.00
Susquehanna & New York R. R. Co.	135 I. C. C. 67	6/30/17	May 26, 1903	*Central Leather Company	Leather & Forest Products.	68.733	1,333,249.00
Talbotton Railroad Company	108 I. C. C. 307	6/30/15	Aug. 23, 1872	Persons Bros. (Merchants)		7.196	78,957.00
Tennessee & North Carolina R. R. Co.	106 I. C. C. 265	6/30/16	June 27, 1911	{Wm. Whitmer & Sons, Inc., owners of	} Lumber	80.147	767,822.00
(The Pigeon River Railway Company.)			(Nov. 2, 1906)	{ Champion Lumber Co.			
Texas South-Eastern Railroad Co.	130 I. C. C. 308	6/30/19	Oct. 9, 1900	Southern Pine Lumber Company	Lumber	25.177	411,700.00
Tionesta Valley Railway Co.	130 I. C. C. 788	6/30/17	Feb. 17, 1904	Central Leather Co. of New Jersey	Leather	102.891	828,800.00
Toledo, Angola & Western Ry. Co.	114 I. C. C. 646	6/30/17	July 11, 1902	W. F. Robinson, who also controls Toledo Stone & Glass Sand Co.		13.512	151,480.00
Tooele Valley Railway Co.	110 I. C. C. 310	6/30/15	Nov. 18, 1908	International Smelting Company	Copper & Lead	7.933	278,494.00
Trinity Valley Southern R. R. Co.	108 I. C. C. 526	6/30/17	Dec. 13, 1901	A. C. Ford, holder of majority of capital stock for benefit of Palmetto Lumber Company.	Lumber	6.525	44,575.00

Partial list of terminal railroads affiliated through stock ownership with an industrial or mining corporation which is principal shipper over its line, as valued by the Interstate Commerce Commission—Continued

Name of Railroad	Authority	Date Valuation	Date Incorporation	Affiliated Interest	Commodity	Miles of Track Owned and/or Used	Valuation of Property Owned and/or Used
Trona Railway Co	43 Val. Rep. 911	12/31/27	Mar. 12, 1913	American Potash & Chemical Corp	Chemicals	33.160	$891,127.00
Tuckaseegee and Southeastern Railway Co.	43 Val. Rep. 463	12/31/28	Aug. 6, 1920	"operated in the interest of the Blackwood Lumber Co."	Sawmill	13.252	295,732.00
Uintah Railway Company	141 I. C. C. 259	6/30/19	Nov. 4, 1903	Barber Asphalt Paving Company	Mine (Gilsonite)	73.957	1,035,200.00
Union Railroad Co (Monongahela Southern Railroad Co.)	34 Va. Rep. 872	6/30/17	July 2, 1894 Feb. 8, 1897	United States Steel Corporation	Iron-Steel	197.052 35.805	22,453,819.00 1,702,000.00
Union & Glenn Springs Railroad	121 I. C. C. 329	6/30/18	Mar. 1, 1899	Union-Buffalo Mills Co	Cotton-Cotton Prod	21.659	429,500.00
Upper Merion & Plymouth Railroad Co	133 I. C. C. 637	6/30/17	July 9, 1907	Alan Wood, Iron & Steel Co	Iron-Steel	2.003	367,150.00
Utah Railway Company	141 I. C. C. 545	6/30/19	Jan. 24, 1912	U. S. Smelting, Refining & Mining Company.	Mine	76.046	5,377,000.00
Uvalde & Northern Railway Co	43 Val. Rep. 319	12/31/27	Mar. 14, 1914	Same interests which control Uvalde Cedar Co. (H. H. Rogers of San Antonio, Tex.).	Lumber	39.851	552,148.00
Valley and Siletz Railroad Co	43 Val. Rep. 353	12/31/27	Jan. 20, 1912	Controlled by William W. Mitchell Co. of Cadillac, Mich., which company is closely affiliated with the Cobbs Mitchell Lumber Co.	Lumber	46.687	1,150,000.00
Ventura County Railway Co	43 Val. Rep. 287	12/31/27	May 11, 1911	American Beet Sugar Co	Sugar-Beets	22.766	307,148.00
Verde Tunnel & Smelter R. R. Co	108 I. C. C. 712	6/30/17	Aug 10, 1912	W. A. Clark, President of United Verde Copper Co.	Mine	11.499	577,101.00
Virginia Southern Railroad Co	108 I. C. C. 460	6/30/16	Mar. 10, 1902	U. S. Spruce Lumber Company	Lumber	11.508	127,551.00
Warren & Ouachita Valley Ry. Co	108 I. C. C. 721	6/30/18	Mar. 7, 1899	½ Arkansas Lumber Co ½ Southern Lumber Co	Lumber	18.650	245,360.00
Warren, Johnsville & Saline River Railroad Co.	119 I. C. C. 68	6/30/18	Aug. 7, 1905	Controlled by S. H. Fullerton, who is President of the Bradley Lumber Co., an affiliated company of the Chicago Lumber & Coal Company.	Lumber	21.915	159,450.00
Washington & Choctaw Railway Co	108 I. C. C. 491	6/30/15	Dec. 13, 1910	E. W. Gates Lumber Company	Lumber	26.176	147,865.00
Washington Run Railroad Co	125 I. C. C. 171	6/30/18	Apr. 25, 1895	Majority of stock owned by individuals connected with Washington Coal & Coke Co.	Mine	7.881	271,000.00
Washington Western Railway Co	116 I. C. C. 491	6/30/17	May 7, 1912	Three Lakes Lumber Company	Lumber	12.203	164,410.00
Waycross & Southern Railroad Co	121 I. C. C. 298	6/30/18	June 2, 1910	Hebard Cypress Company	Lumber	25.733	215,107.00
Western Allegheny Railroad Co	121 I. C. C. 205	6/30/18	Apr. 2, 1902	North Penn Coal Company	Mine	64.838	2,002,608.00
Willamette Valley & Coast R. R. Co	108 I. C. C. 738	6/30/17	Jan. 17, 1911	Haskell-Carpenter Company	Lumber & Agricultural Prods.	6.691	95,033.00

Winifrede Railroad Co.	43 Val. Rep. 515.	12/31/27	Nov. 15, 1881	Winifrede Coal Co.	Coal	9.787	167,000.00
Wyandotte Southern Railroad Co.	116 I. C. C. 137.	6/30/18	Oct. 12, 1901	Pennsylvania Salt Manufacturing Co.		6.282	120,953.00
Wyandotte Terminal Railroad Co.	121 I. C. C. 495.	6/30/18	Sept. 19, 1904	Michigan Alkali Company		1.276	57,000.00
Wyoming & Missouri River R. R. Co.	110 I. C. C. 627.	6/30/19	June 24, 1895	M. S. Kemmerer, coal and steel operator of Mauch Chunk, Pa.	Coal-Steel	18.518	150,414.00
Youngstown & Northern Railroad Co.	116 I. C. C. 475.	6/30/19	Sept. 25, 1909	Carnegie Steel Company	Iron-Steel	6.845	550,000.00
							300,664,188.00

263 [File endorsement omitted.]

Defendant's exhibit 35

NOVEMBER 4, 1933.

For Immediate Release

Statement by Joseph B. Eastman, Federal Coordinator of Transportation

The Coordinator is announcing through the press his desire to elicit from interested shipper and trade associations, organizations of transportation agencies, boards of trade, chambers of commerce, etc., and individuals, such comment, together with pertinent factual data, as they may care to make on any or all of the number of questions relating to Federal transportation legislation.

Any groups or individuals desiring to respond to these questions or on any other significant matter, are urged to do so at as early a date as possible and not later than December 1. Comments may be in the form of a letter or brief. Briefs may be in printed, mimeograph, or typewritten form.

A list of the questions follows:

The Coordinator welcomes a discussion of all or any of the matters embraced in the following list of questions or of any other matters pertaining to Federal transportation legislation.

A. Regulation of Competing Forms of Transportation

1. Should rail, motor, and water transportation enjoy equal opportunities of competition in so far as Federal regulation is concerned?

2. Should equality of opportunity, if it is to be sought, be brought about (a) by applying to motor and water transportation the present degree of Federal rail regulation, (b) by releasing the railroads from much of the present Federal regulation and leaving all agencies largely free of such regulation, or (c) by somewhat relaxing present Federal rail regulation and applying to motor and water transportation a comparable degree of Federal regulation?

3. Assuming no similar regulation imposed on motor and water transportation, should Section 6 of the Interstate Commerce Act be modified to permit railroads to make changes in rates, fares, and charges on not less than 5 days' notice where deemed by them necessary to meet competition of unregulated carriers?

4. Assuming no similar power over rates of motor and water carriers, should Section 15, paragraph 7, of the Interstate Commerce Act be modified to exclude the Commission's power of suspension whenever rate changes are filed to meet competition of unregulated carriers?

5. Assuming no similar power over rates of motor and water carriers, should Section 15, paragraph 1, of the Interstate Commerce Act be modified to remove the Commission's power over minimum rail rates in relation to the competition of unregulated carriers?

6. Assuming no similar inhibition on motor or water carriers, should Section 3 of the Interstate Commerce Act be modified to permit the establishment of special competitive commodity rates on such commodities and at such locations only as deemed necessary to meet the competition of unregulated carriers and independently of rates on similar commodities between the same points or of rates on the same or similar commodities between other points or territories?

7. Assuming no similar restriction on motor or water carriers, should Section 4 of the Interstate Commerce Act be repealed, retained as at present, or modified in the direction of either more rigidity or more flexibility?

8. Should those paragraphs of Section 5 of the Interstate Commerce Act commonly known as the Panama Canal Act be repealed?

9. Should the Inland Waterways Corporation Act, as amended May 29, 1928, be amended so as to permit the railroads and persons connected with the rail carriers to acquire by purchase or lease any of the facilities of the corporation upon the giving of satisfactory assurance that such facilities bought or leased will be continued in common-carrier service?

10. Should Section 16, paragraph 3, sub-sections (a), (b), (c), and (d) of the Interstate Commerce Act be amended by reducing the time limits for the filing of claims for overcharges, for the filing of suits for reparation, and for the filing of carriers' suits for recovery of their charges, and if so what new periods should be fixed?

11. Should Section 16, paragraph 2, of the Interstate Commerce Act be amended to eliminate the part thereof which provides for the award of attorneys' fees to the shipper?

12. Should Section 8 of the Interstate Commerce Act be amended to limit the recovery of reparation to complainants proving actual pecuniary loss?

B. Coordination

1. What are your views as to the desirability of the coordination of all agencies of transportation?

2. If the railroads should undertake such coordination, should they perform all service under their own auspices or should coordination be effected through the cooperative effort of rail and independent motor, water, and air operators, as through mandatory joint rates?

C. Regulation of Interstate Motor Carriers

1. Should interstate motor busses and/or trucks be regulated by the Federal Government?

2. In the event of such Federal legislation, what matters and types of carriers (common, contract, or private operators transporting their own goods) should it embrace?

3. Should such legislation provide for the regulation of the sizes and gross weights of motor vehicles and combinations thereof, or should these matters be left to the regulatory agencies of each state? In either event, have you any definite recommendations to make with reference to maximum permissible lengths and gross weights?

4. What are your views with reference to providing for compulsory public liability and property damage insurance or bond in any Federal Legislation enacted pertaining to motor busses and trucks?

5. What legal authority exists under which the Federal Government could enact legislation to regulate contract and private motor operators?

6. Should those who use public highways for commercial purposes bear the cost of any added thickness and width of the highways required by the operation thereon of large commercial vehicles?

D. Regulation of domestic water lines

1. Should the Federal Government regulate domestic water lines?

2. In the event of such regulation, what matters and what types of carriers should it embrace?

3. In the event of such regulation, by what Governmental body should it be administered?

4. Should tolls be charged for the use of inland waterways made navigable and/or maintained at public expense?

5. What legal authority exists under which the Federal Government could enact legislation to regulate contract and private water carriers?

E. Relations of industry to transportation

1. Should the present commodities Clause (Sec. 1, par. 8, Interstate Commerce Act) be modified to forbid by specific enactment the ownership of railroads by industries?

2. Should either the present or the broader commodities clause suggested in 1 above be made applicable to water carriers?

NOTE.—If briefs are mimeographed or printed, please file ten copies; if typewritten, please file not less than three original or carbon copies.

Defendant's Exhibit 36

[File endorsement omitted.]

Annual report of the Elgin, Joliet, and Eastern Railway Company for the year ended December 31, 1926

Elgin, Joliet, and Eastern Railway Company

Directors: A. F. Banks, Chicago, Ill.; S. M. Rogers, Chicago, Ill.; F. L. Koontz, Chicago, Ill.; G. W. Williams, Chicago, Ill.; T. E. Bond, Chicago, Ill.; C. H. Kenzel, Chicago, Ill.; Edward Beecroft, Chicago, Ill.; Arthur Reynolds, Chicago, Ill.; W. W. Smith, Chicago, Ill.; Ralph Van Vechten, Chicago, Ill.; P. F. McManus, Joliet, Ill.

Officers: A. F. Banks, President, Chicago, Ill.; S. M. Rogers, Vice-President, Chicago, Ill.; F. L. Koontz, Secretary and Treasurer, Chicago, Ill.; Edward Beecroft, Assistant Secretary and Assistant Treasurer, Chicago, Ill.; K. K. Knapp, General Counsel, Chicago, Ill.; P. L. Fisher, General Auditor, Chicago, Ill.; G. W. Williams, Assistant General Auditor, Chicago, Ill.; P. F. McManus, General Superintendent, Joliet, Ill.; J. Horrigan, Superintendent of Motive Power, Joliet, Ill.; A. Montzheimer, Chief Engineer, Joliet, Ill.; T. E. Bond, Traffic Manager, Chicago, Ill.; C. H. Kenzel, Purchasing Agent, Chicago, Ill.

Chicago Office: Continental & Commercial Bank Building, 208 So. La Salle Street.

New York Office: Empire Building, 71 Broadway.

Annual Report of the Elgin, Joliet, and Eastern Railway Company for the Year ended December 31, 1926

The Board of Directors herewith submits the following report of the operations and affairs of the Elgin, Joliet, and Eastern Railway Company for the year ended December 31, 1926.

A. F. BANKS,
President.

CHICAGO, ILLINOIS, *March 1, 1927.*

Income account for the year 1926

Operating Revenues:	
Freight	$24,279,304.80
Passenger	336.76
Other Transportation Revenues	2,074,475.38
Total Transportation Revenues	26,354,116.94
Incidental and Joint Facility Revenues	77,995.48
Total Railway Operating Revenues	26,432,112.42
Operating Expenses: (Per cent of total railway revenue, 65.36)	17,275,369.37
Net Revenue from Railway Operations	9,156,743.05
Railway Tax Accruals: (Per cent of total railway revenue, (05.41)	1,429,750.12

Income account for the year 1926—Continued

Uncollectible Railway Revenues		$692.48
Railway Operating Income		7,726,300.45
Equipment and Joint Facility Rents—Net Debit		2,068,939.77
Net Railway Operating Income, carried forward		5,657,360.68
Net Railway Operating Income, brought forward		5,657,360.68
Non-Operating Income:		
Rental Income	$25,811.02	
Interest from Securities, Accounts, and Deposits	339,737.13	
Miscellaneous	168.10	
		365,716.25
Gross Income		6,023,076.93
Deduction from Gross Income:		
Miscellaneous Rents	$2,449.85	
Miscellaneous Tax Accruals	7,848.31	
Rental of Leased Roads:		
C. L. S. & E. Ry	3,236,429.30	
Other Roads	21,495.91	
Interest on Funded Debt of E., J. & E. Ry. Co.	500,000.00	
Interest on Equipment Trust Bonds	185,075.00	
Interest on Unfunded Debt	957.63	
Amortization of Discount on Funded Debt	662.86	
Miscellaneous Income Charges	7,584.26	
		3,962,503.12
Net Income		2,060,573.81

Profit and Loss Account

Balance to Credit at December 31, 1925		$8,960,664.99
Balance of Net Income for Year per Income Account		2,060,573.81
Other Credits During the Year:		
Profit on Road and Equipment Sold—Cr.		3.00
Unrefundable Overcharges		2,365.15
Donations		3,583.70
Miscellaneous Credits		2,342.75
		11,029,527.40

Debits for the Year

Dividends Paid During the Year on Capital Stock	$600,000.00	
Loss on Retired Road and Equipment	10,583.06	
Surplus Appropriated for Investment in Physical Property	3,583.70	
Miscellaneous Debits	703.66	
		$614,870.42
Balance Surplus to Credit of Profit and Loss Account, December 31, 1926		10,414,656.98

Comparative income account for the years ended December 31, 1926 and 1925 and 1925

	1926	1925	Increase or decrease
Operating Revenues:			
Freight	$24,279,304.80	$22,871,295.85	$1,408,008.95 Inc.
Passenger	336.76	162.91	173.85 Inc.
Other Transportation Revenues	2,074,475.38	2,054,857.76	19,617.62 Inc.
Total Transportation Revenues	26,354,116.94	24,926,316.52	1,427,800.42 Inc.
Incidental and Joint Facility Revenues	77,995.48	80,649.96	2,654.48 Dec.
Total Railway Operating Revenues	26,432,112.42	25,006,966.48	1,425,145.94 Inc.
Operating Expenses	17,275,369.37	17,411,663.42	136,294.05 Dec.
Railway Tax Accruals	1,429,750.12	1,343,533.79	86,216.33 Inc.
Uncollectible Railway Revenues	692.48	3,783.66	3,091.18 Dec.
Railway Operating Income	7,726,300.45	6,247,985.61	1,478,314.84 Inc.
Equipment and Joint Facility Rents—Net Debit	2,078,939.77	2,230,143.06	161,203.29 Dec.
Net Railway Operating Income	5,657,360.68	4,017,842.55	1,639,518.13 Inc.
Non-Operating Income	365,716.25	336,339.67	29,376.58 Inc.
Gross Income	6,023,076.93	4,354,182.22	1,668,894.71 Inc.
Deductions from Gross Income:			
Rent for Leased Roads	3,257,925.21	2,322,790.59	935,134.62 Inc.
Interest on Funded Debt (E., J. & E. Ry. Co.)	500,000.00	500,000.00	
Interest on Equipment Trust Bonds	185,075.00	195,400.00	10,325.00 Dec.
Sundry Other Deductions	19,502.91	24,464.17	4,961.26 Dec.
Net Income	2,060,573.81	1,311,527.46	749,046.35 Inc.

General balance sheet—December 31, 1926

ASSETS

Property Investment:		
Road and Equipment:		
Balance to debit December 31, 1925	$27,934,663.14	
Add, Additions and Betterments Expenditures in 1926	440,485.24	
	28,375,148.38	
Miscellaneous Physical Property Balance December 31, 1926	176,315.67	$28,551,464.05
Special Deposit with Trustees of Mortgage—proceeds of property sold		24,472.40
Leasehold Investment (C., L. S. & E. Ry.)		4,000,000.00
Other Investments:		
Stocks	$873.13	
Liberty Loan Bonds	514,092.16	
Other Bonds	2,400.00	
Notes	16,396.14	533,761.43
Current Assets:		
Cash	2,670,934.66	
Demand Loans and Deposits	10,731,158.45	
Special Deposits	333,872.83	
Interest Coupon Deposits	850.00	
Interest and Dividends Receivable	5,433.78	
Traffic and Car-service Balances due from other companies	66,258.89	
Net Balance due from agents and conductors	577,081.52	
Miscellaneous Accounts Receivable	373,016.27	
Material and Supplies	1,305,479.59	
Other Current Assets	54,683.36	16,118,769.35
Deferred Assets:		
Cash and Securities in Insurance and other Reserve Funds	157,438.56	
Other Deferred Assets	10,088.24	167,526.80
Unadjusted Debits:		
Other Unadjusted Debits		502,194.78
		49,898,188.81

General balance sheet—December 31, 1926—Continued

LIABILITIES

Capital Stock		$10,000,000.00
Funded Debt:		
First Mortgage Five Per Cent Gold Bonds due May 1, 1941—Interest payable semi-annually May 1st and November 1st	$10,000,000.00	
Elgin Equipment Six Per Cent Gold Bonds, $120,000.00 due each year, from April 1927 to April 1938, incl.—Interest payable semi-annually April 1st and October 1st	1,440,000.00	
Joliet Equipment Five Per Cent Gold Bonds, $125,000.00 due each year, from July 1927 to July 1941, incl.—Interest payable semi-annually Jan. 1st and July 1st	1,875,000.00	13,315,000.00
Current Liabilities:		
Traffic and Car-service Balances due to Other Companies	$3,090,331.26	
Audited Accounts and Wages Payable:		
Audited Vouchers:		
C., L. S. & E. Ry. Co., Rental Unpaid	$2,493,848.34	
Other Vouchers Unpaid	357,187.61	
Other Audited Accounts and Wages Payable	633,261.78	3,484,297.73
Miscellaneous Accounts Payable	20,600.03	
Matured Interest Accrued	850.00	
Unmatured Interest and Rents Accrued	224,345.50	
Other Current Liabilities	959,808.99	7,780,233.51
Deferred Liabilities:		
Other Deferred Liabilities		78,521.38
Unadjusted Liabilities:		
Accrued Tax Liability	$1,517,697.95	
Insurance Reserves	266,483.92	
Accrued Depreciation—Road	28,528.70	
Accrued Depreciation—Equipment	2,476,896.75	
Accrued Depreciation on Leased Equipment	3,149,200.11	
Other Unadjusted Liabilities	115,714.23	7,554,521.66
Appropriated Surplus:		
Additions to Property through Income	$605,622.01	
Specifically Invested Reserve	55,147.23	
Not specifically invested	94,486.04	755,255.28
Profit and Loss: Balance of Surplus		10,414,656.98
		$49,898,188.81

Funded debt

The outstanding Funded Debt of the Company amounted on December 31, 1925, to		$13,560,000.00
The following changes in the Funded Debt occurred during the year:		
Obligations Retired:		
Elgin Equipment Six Per Cent Gold Bonds	$120,000.00	
Joliet Equipment Five Per cent Gold Bonds	125,000.00	245,000.00
Outstanding Funded Debt on December 31st, 1926		13,315,000.00

The Outstanding Funded Debt shown above consists of the following issues:	
First Mortgage Five Per Cent Gold Bonds, due May 1, 1941—Interest payable semi-annually, May 1st and November 1st	$10,000,000.00
Elgin Equipment Six Per Cent Gold Bonds, $120,000.00 due each year, from April 1927 to April 1938, incl.—Interest payable semi-annually, April 1st and October 1st	1,440,000.00
Joliet Equipment Five Per Cent Gold Bonds, $125,000.00 due each year, from July 1927 to July 1941, incl.—Interest payable semi-annually, January 1st and July 1st	1,875,000.00

Additions and betterments

The Expenditures during the year 1926 for Additions and Betterments to the Railroad and Equipment were as follows:

Engineering	Cr.	$4,191.84
Land for Transportation Purposes		4,221.35
Grading		33,953.28
Bridges, Trestles, and Culverts		35,870.33
Ties		10,544.92
Rails		17,704.22
Other Track Material		22,844.40
Ballast		19,438.11
Track Laying and Surfacing		9,969.61
Right-of-way Fences		6,396.31
Crossings and Signs		40,763.66
Station and Office Buildings		16,862.32
Roadway Buildings		22,853.38
Water Stations		13,634.17
Fuel Stations	Cr.	22,457.66
Shops and Engine Houses		120,421.56
Telegraph and Telephone Lines		3,265.10
Signals and Interlockers		19,754.65
Power Distribution Systems		35.18
Power Line Poles and Fixtures		141.83
Roadway Machines		4,473.46
Roadway Small Tools		2,051.45
Assessments for Public Improvements		7,780.76
Shop Machinery		33,695.49
Other Expenditures—Road	Cr.	268.94
		419,757.10
Equipment	$125,079.50	
Less: Equipment retired (Original cost of)	Cr. 104,351.36	
		20,728.14
Net Expenditures during the year		440,485.24

Operating expenses—comparative statement for years ended December 31, 1926 and 1925

	1926		1925		Increase or decrease	
	Amount	Per cent of total	Amount	Per cent of total	Amount	Per cent
Maintenance of Way and Structures	$2,391,539.33	13.84	$2,304,241.07	13.23	$87,298.26 Inc.	03.79
Maintenance of Equipment	5,432,469.51	31.44	5,902,738.74	33.90	470,269.23 Dec.	07.97
Traffic	169,032.36	00.98	156,125.32	00.90	12,906.74 Inc.	08.27
Transportation—Rail	8,671,933.35	50.20	8,492,715.96	48.77	179,217.39 Inc.	02.11
General	614,605.39	03.56	559,899.45	03.22	54,705.94 Inc.	09.77
Transportation for Investment—Cr	4,210.57	00.02	4,057.42	00.02	153.15 Inc.	03.77
Total Operating Expenses	17,275,369.37	100.00	17,411,663.42	100.00	136,294.05 Dec.	00.78
Per Cent of Operating Expenses to total Railway Operating Revenues	65.36	.....	69.63	.....	04.27 Dec.	.....

Comparative statement of classified operating revenue and operating expenses for years ended Dec. 31, 1926 and 1925

	1926	1925	Increase	Decrease
OPERATING REVENUES				
Revenue from transportation:				
Freight revenue	$24,279,304.80	$22,871,295.85	$1,408,008.95	.....
Passenger revenue	336.76	162.91	173.85	.....
Switching revenue	2,073,765.18	2,054,451.36	19,313.82	.....
Special service train revenue	710.20	406.40	303.80	.....
Total revenue from transportation	26,354,116.94	24,926,316.52	1,427,800.42	.....
Incidental:				
Storage—Freight	1,372.06	1,785.88	.....	$413.82
Demurrage	67,880.00	70,675.84	.....	2,795.84
Rents of buildings and other property	561.91	238.35	323.56	.....
Miscellaneous	8,179.33	7,936.35	233.98	.....
Joint facility—Cr	11.18	13.54	.....	2.36
Total incidental and joint facility revenue	77,995.48	80,649.96	.....	2,654.48
Total operating revenue	26,432,112.42	25,006,966.48	1,425,145.94	.....
OPERATING EXPENSES				
Maintenance of way and structures:				
Superintendence	187,329.05	170,107.86	17,221.19	.....
Roadway maintenance	187,831.70	192,116.06	.....	4,284.36
Roadway—Depreciation	569.14	504.99	64.15	.....
Bridges, trestles, and culverts	51,346.23	74,777.44	.....	23,431.21
Bridges, trestles, and culverts—Depreciation	1.82	1.56	.26	.....
Ties	331,430.83	362,577.18	.....	31,146.35
Ties—Depreciation	402.91	357.27	45.64	.....
Rails	130,132.77	90,611.94	39,520.83	.....
Rails—Depreciation	305.67	257.16	48.51	.....
Other track material	248,181.02	207,198.59	40,982.43	.....
Other track material—Depreciation	156.81	131.34	25.47	.....
Ballast	12,581.90	18,411.99	.....	5,830.09
Ballast—Depreciation	35.08	31.08	4.00	.....
Track laying and surfacing	599,172.20	536,244.87	62,927.33	.....
Right-of-way fences	13,514.25	8,015.81	5,498.44	.....
Snow and sand fences and snowsheds	3,690.14	2,711.89	978.25	.....
Crossings and signs	29,388.80	28,114.40	1,274.40	.....
Station and office buildings	30,989.71	24,047.63	6,942.08	.....
Station and office buildings—Depreciation	97.03	86.13	10.90	.....
Roadway buildings	17,742.44	15,243.68	2,498.76	.....
Roadway buildings—Depreciation	6.00	5.28	.72	.....
Water stations	25,416.93	15,369.29	10,047.64	.....
Water stations—Depreciation	207.85	184.11	23.74	.....

Operating expenses—comparative for years ended December 31, 1926 and 1925—Continued

	1926	1925	Increase	Decrease
OPERATING EXPENSES—continued				
Maintenance of way and structures—Contd.				
Fuel stations	$42,992.49	$12,480.39	$30,512.10	
Fuel stations—Depreciation	289.67	257.94	31.73	
Shops and enginehouses	96,285.20	180,642.59		$84,357.39
Shops and enginehouses—Depreciation	1,956.26	1,735.71	220.55	
Wharves and docks	3,865.67	468.98	3,396.69	
Telegraph and telephone lines	22,378.39	26,580.87		4,202.48
Telegraph and telephone lines—Depreciation	93.63	7.26	86.37	
Signals and interlockers	51,700.16	39,399.63	12,300.53	
Signals and interlockers—Depreciation	17.60	1.26	16.34	
Power plant buildings	1,374.68	1,181.83	192.85	
Power transmission systems	11.78	214.51		202.73
Power distribution systems	413.67	523.77		110.10
Power line poles and fixtures	2,816.08	*Cr. 396.69*	3,212.77	
Miscellaneous structures	7,871.50	9,159.00		1,287.50
Roadway machines	26,740.35	19,802.15	6,938.20	
Small tools and supplies	38,376.28	37,985.82	390.46	
Removing snow, ice, and sand	54,399.00	52,853.20	1,545.80	
Assessments for public improvements	39.83	0	39.83	
Injuries to persons	27,460.43	33,528.20		6,067.77
Insurance	9,149.54	16,884.37		7,734.83
Stationery and printing	6,693.48	5,631.76	1,061.72	
Other expenses	3,677.01	2,658.35	1,018.66	
Maintaining joint tracks, yards, and other facilities—Dr.	140,154.24	144,283.00		4,128.76
Maintaining joint tracks, yards, and other facilities—Cr.	17,747.89	28,750.38		11,002.49
Total maintenance of way and structures	2,391,539.33	2,304,241.07	87,298.26	
Maintenance of equipment:				
Superintendence	154,154.03	155,569.24		1,415.21
Shop machinery	67,111.70	81,764.33		14,652.63
Shop machinery—Depreciation	16.93	15.48	1.45	
Power plant machinery	3,877.17	3,540.45	336.72	
Power substation apparatus	226.99	0	226.99	
Steam locomotives—Repairs	1,370,184.27	1,469,738.80		99,554.53
Steam locomotives—Depreciation	184,437.09	183,273.74	1,163.35	
Steam locomotives—Retirements	8,190.57	2,135.20	6,055.37	
Freight—Train cars—Repairs	2,959,964.81	3,342,347.44		382,382.63
Freight—Train cars—Depreciation	554,588.93	550,322.07	4,266.86	
Freight—Train cars—Retirements	1,190.41	*Cr. 1,585.04*	2,775.45	
Work equipment—Repairs	34,637.42	32,245.62	2,391.80	
Work equipment—Depreciation	10,116.71	9,785.59	331.12	
Work equipment—Retirements	207.34	136.39	70.95	
Miscellaneous equipment—Repairs	3,011.72	4,248.44		1,236.72
Miscellaneous equipment—Depreciation	2,412.16	1,311.94	1,100.16	
Miscellaneous equipment—Retirements	1,397.94	622.63	775.31	
Injuries to persons	20,679.45	19,168.69	1,510.76	
Insurance	33,175.73	25,196.52	7,979.21	
Stationery and printing	10,094.91	10,665.53		570.62
Other expenses	2,298.06	1,281.30	1,016.76	
Maintaining joint equipment at terminals—Dr.	10,500.83	11,026.31		25.48
Maintaining joint equipment at terminals—Cr.	5.60	71.93		66.33
Total maintenance of equipment	5,432,469.51	5,902,738.74		470,269.23
Traffic:				
Superintendence	104,781.05	97,556.62	7,224.43	
Outside Agencies	28,712.42	23,157.39	5,555.03	
Advertising	398.00	398.00		
Traffic Associations	4,057.18	3,055.36	1,001.82	
Stationery and Printing	31,083.71	31,958.25		874.54
Total Traffic	169,032.36	156,125.62	12,906.74	
Transportation:				
Superintendence	263,087.28	259,431.51	3,655.77	
Dispatching Trains	62,459.13	62,799.07		339.94
Station Employes	579,388.75	568,029.75	11,359.00	
Weighing, Inspection, and Demurrage Bureaus	103,400.49	99,728.74	3,671.75	
Station Supplies and Expenses	34,875.05	30,242.31	4,632.74	
Yard Masters and Yard Clerks	624,025.02	602,275.94	21,749.08	

Operating expenses—comparative for years ended December 31, 1926 and 1925—Continued

	1926	1925	Increase	Decrease
OPERATING EXPENSES—continued				
Transportation—Continued.				
Yard Conductors and Brakemen	$1,691,672.74	$1,642,360.51	$19,312.23	
Yard Switch and Signal Tenders	49,910.54	53,218.57		$3,308.03
Yard Enginemen	1,116,112.47	1,088,223.70	27,888.77	
Fuel for Yard Locomotives	652,336.56	666,786.57		14,450.01
Water for Yard Locomotives	12,686.81	13,837.07		1,150.26
Lubricants for Yard Locomotives	10,188.03	13,467.77		3,279.74
Other Supplies for Yard Locomotives	17,645.58	16,912.11	733.47	
Engine House Expenses—Yard	334,309.64	356,838.74		22,529.10
Yard Supplies and Expenses	28,632.07	27,821.53	810.54	
Operating Joint Yards and Terminals—Dr.	11,463.16	15,589.38		4,126.22
Operating Joint Yards and Terminals—Cr.	0	206.18		206.18
Train Enginemen	602,194.68	578,265.84	23,928.84	
Fuel for Train Locomotives	670,275.45	664,114.95	6,160.50	
Water for Train Locomotives	40,358.61	43,024.54		2,665.93
Lubricants for Train Locomotives	8,281.70	12,177.36		3,895.66
Other Supplies for Train Locomotives	13,993.23	11,708.11	2,285.12	
Enginehouse Expenses—Train	210,901.75	222,788.23		11,886.48
Trainmen	720,763.06	686,622.35	34,140.71	
Train Supplies and Expenses	153,886.18	167,164.67		13,278.49
Signal and Interlocker Operation	120,278.33	122,910.83		2,632.50
Crossing Protection	77,102.16	71,081.93	6,020.23	
Drawbridge Operation	14,036.53	14,032.18	4.35	
Telegraph and Telephone Operation	33,355.12	33,025.04	330.08	
Stationery and Printing	57,152.56	48,792.04	8,360.52	
Other Expenses	10,777.08	6,438.69	4,338.39	
Operating Joint Tracks and Facilities—Dr.	150,408.05	150,129.41	278.64	
Operating Joint Tracks and Facilities—Cr.	44,318.60	44,633.10		314.50
Insurance	1,120.20	1,487.73		367.53
Clearing Wrecks	39,524.34	39,747.88		223.54
Damage to Property	19,004.96	23,375.69		4,370.73
Damage to Live Stock on Right of Way	1,376.68	1,311.22	65.46	
Loss and Damage—Freight	37,780.22	45,117.82		7,337.60
Injuries to Persons	141,487.74	76,675.46	64,812.28	
Total Transportation	8,671,933.35	8,492,715.96	179,217.39	
General:				
Salaries and Expenses of General Officers	108,029.10	96,201.63	11,827.47	
Salaries and Expenses of Clerks and Attendants	258,654.08	246,896.08	11,758.00	
General Office Supplies and Expenses	30,555.85	30,500.49	55.36	
Law Expenses	44,948.83	52,126.21		7,177.38
Insurance	135.50	127.50	8.00	
Pensions	24,583.61	16,640.72	7,942.89	
Stationery and Printing	23,343.72	18,761.18	4,582.54	
Valuation Expenses	78,202.70	63,532.45	14,670.25	
Other Expenses	44,995.30	33,764.13	11,231.17	
General Joint Facilities—Dr.	1,156.70	1,349.06		192.36
Total General	614,605.39	559,899.45	54,705.94	
Transportation for Investment—Cr.	4,210.57	4,057.42	153.15	
Total operating expenses	17,275,369.37	17,411,663.42		136,294.50

Statistics—Comparative statement for years ended December 31st, 1926 and 1925

	1926	1925	Increase	Decrease
Average Miles of Line Operated	459.98	459.79	0.19	
Average Miles of Spurs to Mines and Industries	349.67	391.64	3.03	
Total	854.65	851.43	3.22	
Average Miles of Second Tracks Operated	56.84	56.44	.40	
Average Miles of Yard Tracks and Sidings Operated	311.71	313.55		1.84
Average Length of all Tracks Operated (incl. second tracks, yards & sidings)	1,223.20	1,221.42	1.78	
Total Tons Carried Earning Revenue	36,994,734	34,588,250	2,406,484	
Total Tons Carried One Mile Earning Revenue	1,737,715,727	1,723,827,000	13,888,727	
Average Revenue Tons One Mile Per Mile of Line Operated (1926—459.98 miles: 1925—459.79 miles)	3,777,807	3,749,162	28,645	
Average Distance Carried Revenue Freight (miles)	46.97	49.84		2.87
Average Rate of Freight Per Ton	$0.6563	$0.6612		$0.0049
Average Rate of Freight Per Ton Per Mile	$0.0140	$0.0133	$0.0007	
Average Number of Tons of Revenue Freight Per Train Mile	1,088	1,125		37
Average Number of Tons of Revenue Freight per Loaded Car Mile	39.03	38.84	.19	
Locomotive Mileage—Road	2,725,402	2,640,049	85,353	
Locomotive Mileage—Yard	3,949,464	3,939,466	9,998	
Loaded Car Mileage	46,220,769	45,908,781	311,988	
Empty Car Mileage	26,988,387	25,122,754	1,865,633	
Total Train Mileage (revenue trains)	1,597,273	1,531,950	65,323	
Average Operating Revenue per train mile	$16.55	$16.32	$0.23	
Average Operating Revenue per mile of line & spurs to Mines & Industries (1926—854.65 miles: 1925—851.43 miles)	$30,927.41	$29,370.55	$1,556.86	
Average Railway Tax Accruals per mile of road owned and leased (1926—605.73 miles: 1925—602.55 miles)	$2,360.38	$2,229.75	$130.63	

Classification of total revenue freight tonnage for years ended December 31, 1926 and 1925

Commodity	1926	1925
Products of Agriculture:		
Wheat	54,565	40,041
Corn	43,029	34,854
Oats	99,524	100,519
Other Grain	30,740	47,414
Flour and Meal	576,971	632,377
Other Mill Products	305,492	327,310
Hay, Straw and Alfalfa	2,981	1,435
Tobacco	3,002	2,524
Cotton	5,597	5,819
Cotton Seed and Products except Oil	27	0
Citrus Fruits	203	41
Other Fresh Fruits	2,850	2,322
Potatoes	24,019	44,380
Other Fresh Vegetables	2,050	1,474
Dried Fruits and Vegetables	1,207	2,391
Other Products of Agriculture	66,475	65,714
Total	1,218,732	1,308,615
Animals and Products:		
Horses and Mules	669	419
Cattle and Calves	8,908	7,784
Sheep and Goats	211	228
Hogs	346	477
Fresh Meats	102	22
Other P. H. P.	35,108	37,076
Poultry	18	0
Eggs	247	294
Butter and Cheese	2,327	769
Wool	7,541	6,024
Hides and Leather	39,838	32,809
Other Animals and Products	19,787	23,696
Total	115,102	109,598

Classification of total revenue freight tonnage for years ended December 31, 1926 and 1925—Continued

Commodity	1926	1925
Products of Mines:		
Anthracite Coal	15,420	37,743
Bituminous Coal	13,244,474	11,961,542
Coke	2,325,907	2,029,423
Iron Ore	518,464	772,567
Other Ores and Concentrates	72,724	66,271
Base Bullion and Matte	0	42
Clay, Gravel, Sand and Stone	3,760,996	3,717,162
Crude Petroleum	164,527	75,422
Asphaltum	119,911	109,933
Salt	73,594	89,494
Other Products of Mines	32,855	22,095
Total	20,328,872	18,881,724
Products of forests:		
Logs, Posts, Poles and Cordwood	59,930	31,984
Ties	13,713	19,401
Pulp Wood	1,335	1,119
Lbr., Timber, Box Shooks, Staves & Hdgs	590,860	475,964
Other Products of Forests	4,663	7,224
Total	670,501	535,692
Manufactures and Miscellaneous:		
Refined Petroleum and its Products	1,076,620	1,294,409
Vegetable Oils	12,798	3,811
Sugar, Syrup, Glucose and Molasses	19,490	34,737
Boats and Vessel Supplies	156	0
Iron, Pig and Bloom	1,567,450	1,405,404
Rails and Fastenings	908,584	890,733
Bar & Sheet Iron, Struc. Iron & Iron Pipe	3,975,586	3,756,853
Other Metals, Pig, Bar & Sheet	372,859	324,339
Castings, Machinery and Boilers	141,286	142,755
Cement	1,250,803	1,174,490
Brick and Artificial Stone	408,327	463,068
Lime and Plaster	36,995	35,144
Sewer Pipe and Drain Tile	32,940	15,494
Agrl. Impls. and Vehicles other than Autos	24,608	31,154
Autos and Auto Trucks	190,502	167,037
H. H. Gds. & Sec. Hand Furniture	904	1,028
Furniture (new)	38,525	42,305
Beverages	2,341	1,505
Ice	9,344	9,455
Fertilizers (all kinds)	21,709	16,783
Paper, Printed Matter and Books	41,487	58,295
Chemicals and Explosives	275,626	270,110
Textiles	4,113	255
Cnd. Goods (All Cnd. Food Products)	52,916	53,470
Other Mfrs. and Miscl.	4,177,574	3,554,111
Total	14,643,537	13,746,405
Grand Total, Carload Traffic	36,976,744	34,582,034
L. C. L. Goods not distributed above	17,990	6,216
Grand Total all Commodities	36,994,734	34,588,250

Miles of road operated December 31, 1926

	Line Owned	Line Leased	Operated Under Trackage Rights	Second Track		Industrial Tracks		Yard Tracks and Sidings	
				Owned	Leased	Owned	Leased	Owned	Leased
Elgin, Joliet & Eastern:									
Waukegan, Ill., to Porter, Ind.	129.94			36.38		38.12		155.23	
Normantown, Ill., to Aurora, Ill.	9.63					.83		2.51	
Walker, Ill., to South Wilmington, Ill.	32.74					1.73		11.46	
Rockdale Jct., Ill., to Rockdale, Ill.	6.52					.75		2.83	
Griffith, Ind., to C. L. S. & E. Connection, Ind.	7.04			6.02		.59		.26	
Cavanaugh, Ind., to Hammond, Ind.	5.62					1.59		9.98	
Shearson, Ind., to Whiting, Ind.	3.65					.43		3.35	
Chicago, Lake Shore & Eastern:									
83rd St., South Chicago, Ill., to Kirk Yard, Jct., Ind.		11.88			10.77		140.18		13.50
Cavanaugh, Ind., to Gary, Ind.		4.17			4.08		166.37		96.33
Tracks along C. & E. I.							4.90		6.73
Joliet and Blue Island Ry. Co., Joliet, Ill.							38.98		7.27
Chicago, Rock Island and Pacific Ry. Co., Joliet, Ill.									1.05
A. T. & S. F.: Joliet, Ill.							.21		
C. B. & Q.: South Chicago, Ill.									.37
C. & W. I.: State Line, Ill., to 112th St., Chicago, Ill.			4.80						
Belt Ry.:									
112th St., Chicago, Ill., to 98th St., Chicago, Ill.			2.05						
So. Chgo., Ill., to a point .08 miles southeast			.08						
C. & E. I.:									
Chicago Heights, Ill., to Rossville Jct., Ill.			80.00						
Rossville Jct., Ill., to Jackson, Ind.			54.58						
Danville, Ill., to Sidell Jct., Ill.			22.20						
Sidell Jct., Ill., to Rossville Jct., Ill.			34.40						
Fairmount, Ill.							1.61		.98
C. T. H. & S. E.: Starr, Ill., to Brewer Jct., Ill.			6.54						
I. H. Belt.:									
Indiana Harbor, Ind., to McCook, Ill.			31.97						
East Chgo. to a point 1.11 miles west			1.11						
N. Y. C.: Buffington, Ind., to G. & W. Jct., Ind.			7.53						
C. C. C. & St. L.: Westville, Ill., to Little Vermillion, Ill.			2.57						
C. & I. W.: McCook, Ill., to Gary, Ind.			1.14						
Erie: Towle's Spur, Ind., to State Line, Ind.			.42						
U. S. Fuel Company, Westville, Ill.									1.07
Totals	195.13	16.05	249.39	42.40	14.85	44.04	352.25	185.62	127.30

Summary of all tracks, December 31, 1926

Lines Owned	195.13	
Lines Leased	16.05	
Lines Operated Under Trackage Rights	249.39	
		460.57
Second Tracks—Owned	42.40	
Second Tracks—Leased	14.85	
		57.25
Industrial Tracks—Owned	44.04	
Industrial Tracks—Leased	352.25	
		396.29
Yard Tracks and Sidings—Owned	185.62	
Yard Tracks and Sidings—Leased	127.30	
		312.92
Total all Tracks		1,227.03

Equipment, December 31, 1926 and 1925

Steam Locomotives:	1926	1925
Owned	87	94
Leased from C. L. S. & E. Ry. Co.	181	181
	268	275
Freight cars:		
Box, Wood	189	198
Box, Steel	887	891
Dump, Commercial, Wood	21	21
Dump, Commercial, Steel	5,856	5,858
Flat, Wood	7	8
Flat, Steel	320	320
Gondola, Wood	390	405
Gondola, Steel	1,711	1,712
Gondola, Hopper Steel	3,235	3,239
Tank, Steel	8	8
Rack	961	961
Total Freight Cars	13,585	13,621
Owned	2,785	2,813
Leased from C. L. S. & E. Ry. Co.	9,200	9,208
Leased from Individuals and Companies	1,600	1,600
	13,585	13,621
Less: Leased to other Companies	2,207	2,207
	11,378	11,414
Officers' Car	1	1
Derrick Cars	3	3
Caboose Cars	129	130
Other Road Cars	229	217
Total Miscellaneous Cars:		
Owned	222	210
Leased from C. L. S. & E. Ry. Co.	140	141
	362	351
Total Number of Cars:		
Owned	3,007	3,023
Leased from C. L. S. & E. Ry. Co.	9,340	3,349
Leased from Individuals and Companies	1,600	1,600
	13,947	13,972
Less: Leased to other Companies	2,207	2,207
	11,740	11,765

265 In United States District Court

[Title omitted.]

Stipulation re record

Filed Dec. 20, 1935

It is hereby stipulated and agreed by and between counsel for the parties to this cause, for the purpose of settling the record for the appeal to the Supreme Court of the United States, that:

1. The attached narrative statement of evidence, consisting of 181 typewritten pages, is a true and correct narrative of the oral evidence taken in the trial of this cause, and that said narrative statement shall be substituted in the record on appeal for, and shall have the same effect as the original transcript of oral evidence.

2. All exhibits introduced in evidence by both the petitioner and the defendant shall, with the approval of the Court, be transmitted in original physical form to the Clerk of the Supreme Court, petitioner's exhibits being marked Government Exhibits A to Y, both inclusive (except Exhibit U which was withdrawn), and Defendant's exhibits being marked 1 to 41, inclusive (except Defendant's Exhibits 27A, 28A, 29A, 30A, 31, 32, and 33, which were introduced in evidence by reference and which are covered by stipulation at page 176 of typewritten narrative statement of the oral evidence).

266 3. Said narrative statement and said exhibits shall constitute the statement of the evidence to be transmitted by the Clerk of this Court to the Clerk of the Supreme Court with and as part of the record on appeal.

4. Formal lodgment of the record, and notice thereof, with the Clerk of this Court, are hereby waived, and this stipulation is in lieu thereof.

This December 19, 1935.

M. L. IGOE,
United States Attorney,
ELMER B. COLLINS,
Special Assistant to the Attorney General,
BURT L. SMELKER,
Attorney, Interstate Commerce Commission,
Counsel for Appellant.

NATHAN L. MILLER,
KEMPER K. KNAPP,
Counsel for Elgin, Joliet and Eastern Railway Company,
Appellee.

441

Order

It is ordered that the within and attached stipulation and statement of evidence be and the same are hereby approved, and that in preparing his certificate, and transmitting the transcript of record to the Supreme Court of the United States, the Clerk is directed to proceed in accordance therewith.

CHARLES E. WOODWARD,
United States District Judge.

DECEMBER 20, 1935.

267 In United States District Court

[Title omitted.]

Findings of fact and conclusions of law requested by United States of America, petitioner

Filed Aug. 24, 1934

268 INDEX TO FINDINGS REQUESTED BY UNITED STATES

I

	Pages
Suit to enjoin violation of Commodity Clause, Sec. 1(8), Interstate Commerce Act, 34 Stat. 584	1

II

Description and Corporate History of Defendant	1-5

III

Relationship and Identity of Interests Between Defendant, the Steel Corporation and its Manufacturing Subsidiaries	5
1. Stock Ownership and Control	5-6
2. Boards of Directors	6-7
3. Appointment of Defendant's Directors	7
4. Interlocking Directors	7
5. Manner in which Defendant's Directors Function	7-8
6. Steel Corporation Files Consolidated Federal Income Tax Returns for All Its Subsidiaries	9
7. Location of Offices	9
8. Same Counsel for All Subsidiaries	9-10
9. Meetings of Presidents of All Subsidiaries	10
10. Instructions and Directions to All Subsidiaries	10-11
269 11. Prior Approval of Important Contracts	11
12. Steel Corporation "Appropriates" Money to Subsidiaries	11-12
13. Land Purchases and Sales Not Made by Subsidiaries Without Prior Approval of Steel Corporation	12
14. Steel Corporation Cancels Appropriations Covering Moneys Not Expended by Subsidiaries Within Six Months	12
15. Reports Received Covering Amount Spent in Excess of Appropriations	12
16. Steel Corporation Requires Rigid Compliance By Its Subsidiaries with Its "Rules for Procedure"	12
17. Budget Estimates Submitted By All Subsidiaries	12
18. Quarterly Reports Required of All Subsidiaries Covering Unexpended Balances	12
19. Reports Required Covering All Capital Expenditures	12-13
20. Weekly and Quarterly Reports of Purchases Required	13

Pages

21. Defendant's Purchases 100% Materials and Supplies From Other Subsidiaries of Steel Corporation Wherever Possible ---- 13
22. Defendant Fuel Coal Purchased from Steel Corporation Subsidiary at Latter's "Inter-Company Price List" ---- 13
23. Copies of All Contracts and of All Competitive Bids Required ---- 13
24. "Clearance Account" Kept by Steel Corporation For All Subsidiaries ---- 13-14
25. "Advance Account" Kept by Steel Corporation For All Subsidiaries ---- 14-15
26. Cash Deposits by Defendant in Advance Account For Steel Corporation ---- 15
27. $79,000,000 Deposited by Defendant in Advance Account from 1920 to 1933 ---- 15
28. Approval of Banks for Current Accounts ---- 15-16
29. Supervision of Defendant's Bank Balances ---- 16
30. Daily Reports of Bank Balances of All Subsidiaries ---- 16
270 31. "Inter-Company Price List" Furnished by Steel Corporation ---- 16
32. Plan for Purchase of Steel Corporation Stock Applies to All Subsidiaries ---- 16
33. Steel Corporation's Pension Plan Applies to All Subsidiaries ---- 17
34. Steel Corporation's "Bonus Plan" Applies to All Subsidiaries ---- 17-18
35. Control Over Manufacturing Subsidiaries ---- 18
36. Powers of Steel Corporation's President Over "Transportation" and "General Operation" ---- 18
37. Steel Corporation Not An Operating Company ---- 18-19
38. Trackage Agreement Between Defendant and Chicago & Eastern Illinois Railway Company ---- 19-23
39-45. Lease by Defendant of Chicago, Lake Shore, and Eastern Railway Property ---- 23-38
46. Commodities Transported by Defendant In Which It Has An Interest ---- 39-44
47-49. Defendant and Other Subsidiaries So Controlled Dominated by Steel Corporation As To Constitute Them Its Mere Departments and Agencies ---- 45
Conclusions of Law ---- 45-46

271 [Title omitted.]

Findings of fact and conclusions of law requested by United States of America, petitioner

Now comes United States of America, petitioner in the above-entitled cause, by its counsel, and respectfully requests that the Court find from the competent, relevant, and material evidence of record the following facts:

I

United States of America instituted this suit, at the request of the Interstate Commerce Commission, for an injunction to restrain and prevent the defendant, Elgin, Joliet and Eastern Railway Company, from transporting in interstate commerce, in violation of Section 1 (8), Interstate Commerce Act, 34 Stat. 584; U. S. C., Title 49, Section 1 (8), any article or commodity (except timber and the manufactured products thereof, and such articles or commodities as may be necessary and intended for its use in the conduct of its business as a common carrier) manufactured, mined, or produced by it, or under its authority, or which it may own in whole or in part, or in which it may have any interest, direct or indirect.

II

Description and Corporate History of Defendant

1. Elgin, Joliet and Eastern Railway Company, defendant, is a corporation railroad company organized and existing under
272 the general laws of the States of Illinois and Indiana, and is subject to all the provisions of the Interstate Commerce Act, approved February 4, 1887 (24 Stat. 379, as amended, U. S. C., Title 49). Its principal office is located at Chicago, in the State of Illinois, and within the jurisdiction of this Court. It also has an office in the Empire Building, 71 Broadway, New York, N. Y. (p. 3 of Def's. Exs. 36–40, inclusive). It is a common carrier engaged in the transportation of property (but not passengers) in interstate commerce, and operates a line of railroad extending from Waukegan, Illinois, to Joliet, Illinois, thence easterly to Porter, Indiana, forming what is known as the "Chicago Outer Belt Line." It also operates a line from Griffith, Indiana, to South Chicago, Illinois, which latter line serves the cities of Gary, Buffington, Indiana Harbor, Whiting, and Hammond, all located within the State of Indiana; and it also operates branch lines of railroad extending from Normantown, Illinois, to Aurora, Illinois, and from Walker, Illinois, to South Wilmington, Illinois. Defendant also operates (under a trackage agreement dated February 1, 1909, between the Chicago, Lake Shore and Eastern Railway Company, a corporation under the laws of Illinois and Indiana, and a common carrier engaged in interstate commerce, hereinafter referred to as the Lake Shore Company, and the Chicago and Eastern Illinois Railroad Company, a corporation under the laws of Illinois and a common carrier engaged in interstate commerce, hereinafter referred to as the Eastern Illinois Company, the interest of the Lake Shore Company in said agreement having been acquired by defendant by lease dated June 1, 1909, and which interest it still retains), its engines, trains, and cars over such of the lines of the Lake Shore Company as extend from Chicago Heights, Illinois, to Rossville Junction, Illinois, a distance of 80 miles, and, in addition thereto, such of the lines of said Eastern Illinois Company as extend from Rossville Junction, Illinois, to Jackson, Indiana, a distance of 53.10 miles, and, in addition thereto, the lines of said Eastern Illinois Company which extend from Danville, Illinois, to Sidell Junction, Illinois, a distance of 22.20 miles, and in addition thereto, such of the lines of the Eastern Illinois
273 Company as extend from Sidell Junction, Illinois, to Rossville Junction, Illinois, a distance of 34.40 miles. (Am. Pet., pp. 3–4; ans., p. 2.)

2. Defendant's operation under this truckage agreement is limited, by the express language of the agreement, and in practice, to the transportation of coal, coke, and stone mined or produced by, and intended for the use of the Illinois Steel Company or other subsidi-

aries of the United States Steel Corporation (Gov. Ex. Y, pp. 7–9; and Gov. Ex. C, p. 22; R. 71–72).

3. The following is a statement of the number of miles of track operated by defendant as of December 31, 1930, including all types and classes of track (p. 23, Def's Ex. 40):

	Miles
Lines owned	195.07
Lines leased	16.10
Lines operated under trackage rights	235.87
Total	447.04
Second tracks—owned	43.42
Second tracks—leased	15.99
Total	59.41
Industrial tracks—owned	47.25
Industrial tracks—leased	420.18
Total	467.43
Yard tracks and sidings—owned	194.22
Yard tracks and sidings—leased	135.96
Total	330.18
Total of all tracks	1,304.06

Approximately 88 per cent of the tracks owned and/or maintained by defendant are located within and about the plant enclosures of the Illinois Steel Company and the several other subsidiaries of the United States Steel Corporation (Gov. Ex. O).

4. The corporate history and development of the defendant is as follows: On or about April 30, 1884, The Joliet, Aurora and Northern Railway Company was duly incorporated under the laws of the State of Illinois. On March 18, 1887, the Elgin, Joliet and Eastern Railway Company was duly incorporated under the
274 laws of the State of Illinois and was authorized to issue capital stock in amount not to exceed the sum of $3,000,000. On April 13, 1887, the Elgin, Joliet and Eastern Railway Company of Indiana was duly incorporated under the laws of the State of Indiana and was authorized to issue capital stock in an amount not to exceed the sum of $1,000,000. Thereafter, and by deed dated October 29, 1888, The Joliet, Aurora and Northern Railway Company conveyed all its property and assets of every kind to said Elgin, Joliet and Eastern Railway Company, organized as aforesaid under the laws of the State of Illinois. On December 4, 1888, said Elgin, Joliet and Eastern Railway Company, and said Elgin, Joliet and Eastern Railway Company of Indiana, duly consolidated as Elgin, Joliet and Eastern Railway Company, in accordance with the laws of the States of Indiana and Illinois, which consolidated corporation is defendant herein. Thereafter and subsequently to January 9,

1891, defendant acquired by purchase all the property and assets of every kind of the following railroad corporations: Gardner, Coal City and Northern Railway Company, a corporation duly organized under the laws of the State of Illinois on or about May 18, 1888; Waukegan and Southwestern Railway Company, a corporation duly organized under the laws of the State of Illinois, on or about June 28, 1889; Chicago Heights & Northern Railway Company, a corporation duly organized under the laws of the State of Illinois, on or about May 13, 1897; and Griffith and Northern Railway Company, a corporation duly organized under the laws of the State of Indiana, on or about August 19, 1899. At or about the time when the property and assets of the said railroad corporations were acquired, defendant's authorized capital stock was duly increased to an amount not to exceed $6,000,000, pursuant to the laws of the States of Indiana and Illinois. On May 21, 1909, defendant caused its authorized capital stock to be increased to ten million dollars ($10,000,000), and such amount is its present authorized capitalization (Am. Pet. pp. 5–7; Ans. p. 2).

5. By lease dated June 1, 1909, between the Lake Shore Company, as lessor, and defendant, as lessee, defendant acquired all the property and assets of every kind of the Lake Shore Company for a term of sixty (60) years, commencing June 1, 1909, and ending May
275 31, 1969. Under the terms of said lease defendant assumed the obligation to perform all the terms of all the outstanding agreements, contracts, and leases theretofore made and to be performed by the Lake Shore Company, which agreements included the trackage agreement with the Chicago and Eastern Illinois Railway Company, hereinbefore mentioned. At the time the lease was executed the Lake Shore Company's capital stock was and now is owned by Illinois Steel Company, and its lines served the industrial plants of that company almost exclusively (Am. Pet. 7; Ans. p. 2; Gov. Ex. B, p. 7).

6. The lake Shore Company's line acquired by defendant through said lease now includes 537.48 miles of track, of which 16.10 miles is main track, located at South Chicago, Ill., and Gary, Ind., and connecting with tracks of the Pennsylvania Railroad, Baltimore & Ohio Railroad, and New York Central Railroad (R. 63). 15.99 miles are second track, and 505.39 miles consist of industrial tracks, yard tracks and sidings, nearly all of which are located within and about the industrial plants of Illinois Steel Company and other subsidiaries of the United States Steel Corporation at South Chicago, Gary, and vicinity (Def's. Ex. 40, p. 22; and Gov. Ex. O). "Industrial tracks" are tracks used exclusively for the service of an industry (R. 276–7).

III

Relationship and Identity of Interests Between Defendant, the United States Steel Corporation, and the Latter's Manufacturing and Producing Subsidiaries, whose Commodities Defendant Transports

Stock Ownership and Control

1. The United States Steel Corporation, a corporation organized February 25, 1901, under the laws of the State of New Jersey, and hereinafter referred to as the Steel Corporation, acquired in 1901 and now owns all the capital stock of defendant; it also owns all the capital stock of the Illinois Steel Company, and the latter company owns all the capital stock of the Lake Shore Company. The Steel Corporation also owns all the issued and outstanding capital stock of the following corporations, all of which were organized under the laws of New Jersey: American Steel & Wire Company; American Bridge Company; American Sheet and Tin Plate Company; Federal Steel Company; and National Tube Company. Federal Steel Company, hereinbefore referred to, owns all the issued and outstanding capital stock of United States Fuel Company, a corporation under the laws of Illinois. The Steel Corporation and Illinois Steel Company own all the issued and outstanding capital stock of the Universal Atlas Cement Company, a corporation under the laws of Indiana, and of United States Coal & Coke Company, a corporation under the laws of West Virginia, the respective amounts of capital stock issued by said subsidiaries, and the ownership thereof being as follows:

276

Subsidiaries		Capital stock issued	Amount owned by Steel Corporation
Elgin, Joliet and Eastern Railway Company	(Com.)	$10,000,000	$10,000,000
Chicago, Lake Shore and Eastern Railway Company	(Com.)	9,000,000	[1]
Illinois Steel Company	(Com.)	18,650,600	18,650,600
American Bridge Company	(Com.)	10,000,000	10,000,000
American Sheet & Tin Plate Company	(Com.)	24,500,000	24,500,000
	(Pfd.)	24,500,000	24,500,000
American Steel & Wire Company	(Com.)	50,000,000	50,000,000
	(Pfd.)	40,000,000	40,000,000
Federal Steel Company	(Com.)	46,484,300	46,484,300
	(Pfd.)	53,260,900	53,260,900
National Tube Company	(Com.)	45,000,000	45,000,000
	(Pfd.)	40,000,000	40,000,000
Universal Atlas Cement Company	(Com.)	3,500,000	[2] 2,500,000
United States Fuel Company	(Com.)	3,000,000	[3]
United States Coal & Coke Company	(Com.)	12,500,000	[4] 10,500,000

[1] $5,000.00 owned by Illinois Steel Company.
[2] Balance of $1,000,000 owned by Illinois Steel Company.
[3] $3,000,000 owned by Federal Steel Company.
[4] Balance of $2,000,000 owned by Illinois Steel Company.

Boards of Directors Controlled by Steel Corporation

2. Because of its ownership of the entire capital stock of the defendant and the other corporations named above, the Steel Corporation is enabled to, and does, control and direct the election of
277 the directors of defendant and said other subsidiaries (Am. Pet. p. 10; Ans. p. 3).

3. Defendant's directors are now appointed as follows: the Steel Corporation appoints defendant's President, and then appoints him as Chairman of defendant's Board of Directors, with "proxy" authority to appoint defendant's other directors. Defendant's President thereupon selects and appoints its eleven other directors from defendant's "pay roll" officers and employees (R. 227–229).

Interlocking Directors

4. From the time the Steel Corporation acquired defendant's stock in 1901, until 1920, nine persons who were directors and/or officers of the Steel Corporation simultaneously served upon defendant's Board of Directors. Included among such persons were: E. H. Gary, Chairman of the Steel Corporation's Board of Directors, Director of defendant from March 21, 1899, to February 28, 1920; Charles M. Schwab, President of the Steel Corporation, Director of defendant from April 15, 1901, to October 30, 1905; J. A. Farrell, President of the Steel Corporation, Director of defendant from June 14, 1911, to February 28, 1920; R. Trimble, Secretary and Treasurer of the Steel Corporation, Director of defendant from June 8, 1904, to June 9, 1920; and W. J. Filbert, Comptroller of the Steel Corporation, Director of defendant from October 30, 1905, to June 9, 1920 (Gov. Ex. R; R. 228–229, 289). Since defendant's stock was acquired by the Steel Corporation in 1901 only three of defendant's directors were persons not connected with the Steel Corporation and/or its subsidiaries (R. 227).

5. (a) Defendant's Board of Directors functions as follows: the Chairman of defendant's Board of Directors (who is also defendant's President) calls them into a general meeting in June of each year, and if occasion arises, into infrequent special meetings (R. 221). At the general meetings the directors approve all contracts entered into and executed in defendant's corporate name for the preceding twelve months, excepting such occasional contracts, if any, which may have been approved by them at special meetings (R. 221–223). The projects involved in, or the undertaking covered by, the contracts have generally been completed or performed before the
278 execution of the contracts is approved by defendant's directors. This was the general procedure followed with respect to 2,313 contracts executed in defendant's corporate name between 1910 and 1933 (R. 211–212, 222). Such of the contracts as involve expenditures chargeable to defendant's capital account are preceded by "re-

quests for appropriation" submitted by defendant to, and approved and authorized by, the Steel Corporation before such contracts are consummated (R. 223; Gov. Ex. D, p. 12).

(b) Defendant's President confers with, and receives the approval of, officers of the Steel Corporation before calling defendant's directors together for the purpose of declaring dividends (R. 92–94, 128–129; Gov. Ex. F). After the Steel Corporation officials and defendant's President have agreed upon the time and the amount of dividends to be declared by defendant, its Board of Directors is called together and formal action is taken declaring the dividend, and an official minute thereof is entered upon defendant's books (Gov. Ex. F, pp. 2–3, 14–22).

(c) After extended correspondence and conferences with, and approval by, the Steel Corporation, defendant's President executed on October 20, 1922, a supplement to the trackage agreement between the Chicago, Lake Shore and Eastern Railroad and the Chicago & Eastern Illinois Railroad, but defendant's Board of Directors did not approve the supplemental agreement until December 20, 1922 (Gov. Ex. Y, last three pages), after the Chairman of the Steel Corporation had so directed by letter addressed to defendant's President on October 26, 1922 (Gov. Ex. C, p. 39).

(d) When defendant received compensation from the Federal government for the use of its road during Federal control, the Steel Corporation directed defendant to open a special account for deposit of the funds in Continental & Commercial Bank, at Chicago, Illinois. The Steel Corporation notified defendant that it was selling to defendant United States Government Bonds in the amount of the sum to be so deposited, retained the bonds and furnished defendant with a certificate showing that the Steel Corporation was holding the bonds as "custodian" for defendant (Gov. Ex. E, pp. 17–22). Thereupon, the Steel Corporation directed defendant's President to have defendant's Board of Directors meet and approve the investment by defendant in the bonds thus sold to it by the Steel Corporation (Gov. Ex. E, pp. 20–21).

279 Filing of Consolidated Income Tax Returns

6. Since 1917 the Steel Corporation has filed, and now files, in its own corporate name on behalf of defendant and approximately 175 others of its subsidiaries, including those named above, one consolidated or affiliated Federal income tax return, pursuant to the Revenue Acts of the United States (Am. Pet. p. 15; Ans. p. 11).

Location of Offices

7. The offices of the defendant and of all the other subsidiaries, named above, of the Steel Corporation, and the offices of the attorneys who represent the defendant and the other subsidiaries in the Chicago district, are all located in the same office building, Conti-

nental and Commercial Safe Deposit Company Building, 208 South La Salle Street, Chicago, Ill. (R. 493–494). The office space used by defendant is first leased from the owners of the building by Illinois Steel Company, and by it leased to defendant (Am. Pet. p. 11; Ans. p. 6). The Steel Corporation and the defendant also maintain offices in the same building at 71 Broadway, New York, N. Y. (Gov. Ex. 1; and p. 3, Def's. Exs. 36–40, inclusive).

Employment of Same Counsel for All Companies in Chicago District

8. The Steel Corporation appoints one attorney or firm of attorneys located in Chicago, as counsel for defendant, for the Steel Corporation, and for all the above-named manufacturing and producing subsidiaries of the Steel Corporation located or doing business within the Chicago district. For many years said firm of attorneys was known as Knapp and Campbell, and are now known as Knapp, Beye, Allen, Cochran and Cushing; and their offices are maintained in the above-mentioned building located at 208 South La Salle Street, Chicago, Ill., in which defendant's general offices and those of the Illinois Steel Company are also located. The General Counsel, or other officers, of the Steel Corporation allocate or apportion to defendant and each of the other above-named subsidiaries of the Steel
280 Corporation its respective share of the total annually by the Steel Corporation to said attorneys, and such amounts are charged by the Steel Corporation to, and collected said subsidiaries (Gov. Ex. H; R. 94–96). Illinois Steel Company renders bills to defendant monthly covering defendant's share of the counsel's salaries and defendant makes payment to Illinois Steel Company and not to the attorneys themselves (Gov. Ex. H). Increases in defendant's share of the sum paid the attorneys are made by the Steel Corporation, which notifies defendant of such increases (Gov. Ex. H p. 3). The Steel Corporation increased defendant's share of these attorneys' salaries from $14,000 in 1920 to $23,940 in 1923, and further to $39,500 in 1925 (Gov. Ex. H, pp. 1, 3, 5).

Meetings of Presidents of All Subsidiaries

9. The Steel Corporation calls and conducts at its offices at 71 Broadway, New York, N. Y., periodical meetings of all its subsidiary corporations, including the defendant and the other subsidiaries located in the Chicago district, mentioned above. At these meetings general discussions and reviews are had with respect to the activities and operations of both the railroad and the manufacturing and producing subsidiaries of the Steel Corporation, such discussions covering the financial results of past activities and operations, and prospective results from future operations of the respective subsidiaries. These meetings are held several times during a year (Gov. Ex. A; R. 53, 56–57). Defendant discloses in these meetings such

information as its gross revenues, number of cars handled, tonnage hauled by it for particular shippers during specified periods of time, location of new plants by shippers on defendant's line, and general trend and volume of business among shippers over defendant's line (Gov. Ex. A, p. 6).

Instructions and Directions to All Subsidiaries

10. The Steel Corporation issues to the Presidents or other executive officers of defendant and each of its other subsidiaries so-called letters of "advice", which letters contain instructions and
281 directions to the subsidiaries concerning, among other things, the form and frequency of reports covering information to be furnished by the subsidiaries to the Steel Corporation with respect to their contemplated contracts, expenditures, purchases, etc., and their expenditures and purchases and contracts already made. The Steel Corporation prescribes the form of the various reports to be submitted to it by all its subsidiaries (Gov. Exs. K and D, p. 2; R. 100, 105–6, 115; also Gov. Ex. D, pp. 14, 15, 22, 88).

Prior Approval by Steel Corporation of All Important Undertakings of Its Subsidiaries

11. All projects involving agreements, contracts, leases, and undertakings of major importance contemplated by defendant and any other subsidiary of the Steel Corporation are submitted to the latter by the subsidiaries for final approval before they are consummated (R. 102, 104; Gov. Exs. B, C, and D, p. 12).

Appropriations of Money by Steel Corporation to All Subsidiaries

12. Pursuant to instructions from the Steel Corporation, defendant and all other subsidiaries submit to the Steel Corporation a "Request for Appropriation" covering any contemplated expenditure of money for improvements, additions, and betterments, or other item chargeable to capital account, or any unusual maintenance expense, above a minimum prescribed by the Steel Corporation. Until 1920 this minimum was $5,000, when it was increased to $10,000 by Resolution of the Finance Committee of the Steel Corporation (Gov. Ex. D, p. 14). In 1932 it was decreased to $5,000 (Gov. Ex. K; R. 105–110). These requests for appropriation are, in reality, requests made to the Steel Corporation by its subsidiaries for authority to spend their own money upon some project deemed necessary by the officers of the subsidiary which makes the request. The requests explain the purpose for which the sums therein specified are desired to be spent by the subsidiaries (Gov. Ex. T), and they are either approved or rejected by the Finance Committee and by the President of the Steel

Corporation (Gov. Exs. D and T), and returned to the sub-
282 sidiary which submitted them (R. 111). The subsidiaries do not act in defiance of, but conform to the action taken by the Steel Corporation on the requests (R. 112–113).

13. All purchases or sales of land contemplated by any subsidiary, regardless of the amount involved, must be submitted to and approved by the Steel Corporation before consummation (Gov. Ex. D, pp. 15, 22; R. 116–117).

14. If the amount authorized by the Steel Corporation to be expended by any subsidiary is not expended within six months after approval by the Steel Corporation, the unexpended balance of such appropriation is cancelled under instructions of the Steel Corporation (Gov. Ex. D, pp. 10–11, 41–42).

15. Detailed reports are required by the Steel Corporation concerning any "over-run" or amount spent in excess of that appropriated by the Steel Corporation for any particular project (Gov. Ex. D, pp. 36–39).

16. The President of the Steel Corporation insists upon a rigid compliance with "rules for procedure", and instructions issued by it to its subsidiaries concerning expenditures in excess of the amount authorized by the Steel Corporation (Gov. Ex. D, p. 7).

Budget Estimates Submitted to Steel Corporation by Subsidiaries

17. All subsidiaries of the Steel Corporation submit to it periodically their individual "budget estimate" of expenditures anticipated for the ensuing six months (R. 117–118; see Gov. Ex. D, pp. 49–54, 56–58).

Reports Covering Unexpended Balances

18. Pursuant to instructions issued by the Steel Corporation, all its subsidiaries make quarterly reports of unexpended balances of amounts previously authorized by the Steel Corporation upon appropriation requests (R. 117; Gov. Ex. D, p. 24).

Reports Required Covering All Capital Expenditures

19. Under instructions issued by the Steel Corporation, all subsidiaries make reports to the Steel Corporation covering all
282 expenditures for capital purposes, irrespective of whether such expenditures are above or below the minimum of $5,000 (R. 116).

Purchases of Materials and Supplies

20. Weekly and quarterly reports are made by all subsidiaries to the Steel Corporation of all purchases of materials and equipment in the amount of $500 or over (Gov. Ex. J, pp. 9–16). Forms of such reports are furnished by the Steel Corporation to the Purchasing Agent of each subsidiary (Gov. Ex. J, p. 9).

21. Defendant purchases 100 per cent of all its materials and supplies, whenever possible, from other subsidiaries of the Steel Corporation (R. 264–265).

22. Defendant purchases the coal used by it in its capacity as common carrier from coal mining subsidiaries of the Steel Corporation, at prices fixed by the Steel Corporation in its "Inter-Company Price List" (Gov. Ex. N; R. 265–266). From 1926 to 1930, inclusive, defendant purchased from United States Fuel Company, a subsidiary of the Steel Corporation, coal for fuel and other common carrier purposes ranging in yearly amounts from $1,516,732.83 to $1,027,806.69 (Gov. Ex. W). Officials of the Steel Corporation direct defendant to buy its coal for common carrier uses from subsidiaries of the Steel Corporation where "it is to the Corporation's interest to do so" (Gov. Ex. W, pp. 1–14). Defendant is billed for such coal so purchased at whatever price is shown in the Steel Corporation's current "Inter-Company Price List" (Gov. Exs. N, J, pp. 5–8; R. 265).

23. The Steel Corporation requires defendant and all its other subsidiaries to furnish the Steel Corporation with copies of all contracts entered into by them, together with copies of competitive bids submitted to the subsidiaries upon the projects involved in such contracts (Gov. Ex. J, p. 14).

"Clearance Account" for All Subsidiaries

24. In 1901 the Steel Corporation set up, and since then has maintained for all its subsidiaries a so-called "clearance ac-
284 count", identified as "United States Steel Corporation Clearance Account" (Gov. Ex. E, pp. 1–5). Through and by means of this account settlement is made monthly by the Steel Corporation itself between all its subsidiaries covering their transactions with each other, excepting freight charges and claim accounts payable to or by its railroad subsidiaries (Am. Pet. p. 12; Ans. p. 7; Gov. Ex. E, pp. 1–3; R. 119–120). This account is maintained in the offices of the Steel Corporation at New York (R. 120). Through its operation the subsidiaries do not settle directly with each other. Instead, a balance of each subsidiary's account with the other subsidiaries is struck monthly by the Steel Corporation, and a charge is made by it against any subsidiary whose balance shows a debit or indebtedness to another subsidiary, and payment thereof is made to the Steel Corporation by such indebted subsidiary (Gov. Ex. E, pp. 41–42, 49–50).

"Advance Account" for All Subsidiaries

25. In 1905 the Steel Corporation established what is known as its "advance account", and since that time such account has been and now is maintained in the offices of the Steel Corporation at New York for all its subsidiaries (Gov. Ex. E, pp. 4–5). This account

covers deposits of money and cash dealings with or by the Steel Corporation and each subsidiary (R. 120–123). Pursuant to the purpose and plan of this account the subsidiaries deposit from time to time their surplus cash funds in banks designated by the Steel Corporation, the deposit being made to the credit of the Steel Corporation and a credit of the amount so deposited in each instance being made by the Steel Corporation to the particular subsidiary's "advance account" (Gov. Ex. E, pp. 28–34; R. 235–238). The Steel Corporation itself fixes the rate of interest, 2½ per cent, paid to the subsidiaries for amounts so deposited for the Steel Corporation and credited to the advance account of the particular subsidiary, and when so deposited the funds are used by the Steel Corporation for its current requirements (R. 119–120, 238–240).

Amounts so deposited by the subsidiaries for the Steel Corporation are not "free cash" subject to withdrawal by the subsidiary's check. Instead, if the particular subsidiary requires cash
285 funds, it notifies the Steel Corporation, draws a draft upon the Steel Corporation and, if and when the Steel Corporation pays the draft, it makes a debit entry in that subsidiary's advance account (R. 240–241).

26. Defendant makes frequent deposits in Chicago banks to the credit of the Steel Corporation upon six or eight days' notice from and direction by the Steel Corporation (Gov. Ex. E, pp. 28–58), the amount of such deposits being credited to defendant or charged against the Steel Corporation in the "advance account." On January 1, 1929, there was standing to defendant's credit and charged against the Steel Corporation in this "advance account" approximately $12,700,000; on January 1, 1930, approximately $12,200,000; and on January 1, 1934, approximately $965,000 (R. 254).

27. From 1920 to September 1933 defendant deposited in banks to the Steel Corporation's account, and received credit therefor in the "advance account" a total of $79,000,000, of which total $32,000,000 was deposited upon specific direction of the Steel Corporation and $47,000,000 was deposited by defendant without such specific direction (R. 257). There was never a "debit balance" against the defendant in the "advance account"; that is to say, the defendant was never indebted to the Steel Corporation as a result of these cash transactions.

Selection of Local Banks for Subsidiaries

28. (a) All subsidiaries confer and advise with the Steel Corporation and receive its approval before opening a new account in the name of a subsidiary at any bank (R. 123), and the record discloses no instance wherein any subsidiary rejected the views of the Steel Corporation with respect to opening an account at a bank (R. 124).

(b) After defendant had its compensation from the Federal Government for the use of its road during Federal control, the Steel

Corporation directed defendant to open a special bank account for deposit of such funds in Continental & Commercial Bank, at Chicago, Illinois; and notified defendant that the Steel Corporation was selling defendant United States Government Bonds for the amount of the said deposit, retained the bonds and furnished defendant with a certificate showing that the Steel Corporation was holding
286 the bonds as "Custodian" for defendants (Gov. Ex. E, pp. 17–22).

Supervision of Bank Balances

29. The Steel Corporation supervises and directs defendant with respect to the amount of each balances maintained in local Chicago banks (Gov. Ex. E, pp. 14–21).

Daily Reports of Bank Balances of Subsidiaries to Steel Corporation

30. The subsidiaries of the Steel Corporation furnish it daily and weekly reports showing amount of balances maintained by them in their own corporate names on deposit in local banks (R. 124–125).

"Inter-Company Price Lists"

31. The Steel Corporation compiles and furnishes quarterly, to each of its subsidiaries, its "Inter-Company Price List", showing the current sales prices of articles and commodities manufactured and produced by the several subsidiaries and offered for sale by them (Gov. Ex. N). Defendant purchases 100 per cent of its materials and supplies, whenever possible, from other subsidiaries of the Steel Corporation at prices shown in the current edition of its price list (R. 265).

Installment Plan for Purchase of Steel Corporation Stock Applies to all Subsidiaries

32. The Steel Corporation maintains a plan whereby its common stock may be purchased by its own officers and employees, and those of all its subsidiaries, upon a deferred payment or installment plan, at a price under the market value thereof, in proportion to the salary of the particular officer or employee. The Steel Corporation retains custody of such stock until the purchase price is fully paid, but if the purchaser leaves the employment of the Steel Corporation or of the subsidiary by whom it is employed, before the purchase price of such stock is fully paid, such officer or employee loses its right to purchase the stock, and the stock is retained by the Steel Corporation, the purchaser being reimbursed for amounts paid in, plus interest at 5 per cent per annum (Am. Pet. p. 13; Ans. p. 8).

287 Steel Corporation's Pension Plan Applicable to Employees of All Subsidiaries

33. All officers and employees of the Steel Corporation and of all its subsidiaries participate, in the same manner and under the same rules, regulations, and requirements, in the benefits of "United States Steel and Carnegie Pension Fund", which is a trust fund created in 1910 and held in the name of the corporation just mentioned, organized under the laws of the State of Pennsylvania (Gov. Ex. Q). The fund was created jointly by the United States Steel Corporation and the trustees of the Andrew Carnegie Pension Fund, the former contributing $8,000,000 and the latter $4,000,000, the income from which was to be and is used in the payment of pensions to employees of the Steel Corporation and those of all of its subsidiary companies, in accordance with rules and regulations governing the payment of the pensions (R. 129–130). The fund is administered by the corporation last named, but if the income from it is insufficient in any year to meet the pension requirements of the Steel Corporation and its subsidiaries, then the Steel Corporation "advances" on behalf of its several subsidiary companies their respective shares of the amount necessary to make up the deficit in the pension fund. Then semi-annually the Steel Corporation renders a charge account against each of the subsidiary companies for its proportion of the amount so advanced (R. 130–131; Gov. Ex. G. p. 5). The Board of Directors and list of officers of the corporation known as United States Steel and Carnegie Pension Fund was and is composed chiefly of persons who were and are also officers and directors of the Steel Corporation or of its subsidiaries (Gov. Exs. G, Q, and R). The manner in which defendant and the other subsidiaries carry the Pension Fund, and the assessments against them by the Steel Corporation therefor, in their accounts, was outlined and prescribed and is directed by the Comptroller of the Steel Corporation (R. 131; Gov. Ex. G).

Steel Corporation's "Bonus" Plan Applies to All Subsidiaries

34. The Steel Corporation organized in 1921 and maintains a "Profit Sharing Plan", which plan is applicable alike to all
288 officers and employees of the Steel Corporation and all its subsidiaries. The plan was adopted by stockholders of the Steel Corporation, and under it, when the net profits of the Steel Corporation for any year equalled or exceeded $100,000,000, a certain percentage of the profits is distributed to officers and employees of the Steel Corporation and of its subsidiary companies who have performed unusual and meritorious service during the year. The Steel Corporation, through its Board of Directors, determines the total amount of the profit or bonus to be distributed, and then the Steel Corporation pays the entire amount of the fund to the Profit

Sharing Committee. Thereafter, the Steel Corporation calls upon each subsidiary to remit its proportionate share of the fund allocated to it for distribution to its employees (R. 135, 136; Gov. Ex. L). The amount which defendant and each of the other subsidiaries is called upon to pay into the fund is fixed by a committee of stockholders of the Steel Corporation known as the "Profit Sharing Committee", and not by the officers or directors of the respective subsidiaries (Gov. Ex. I).

Extent of Control Over Manufacturing Subsidiaries

35. The Steel Corporation exercises a much wider supervision and interest in the affairs or conduct of the affairs of its manufacturing and producing subsidiary companies than it does in respect to its railway subsidiaries (R. 158–159).

Powers and Duties of President of Steel Corporation

36. Article IV, § 3, of the Steel Corporation's by-laws provides as follows (Gov. Ex. M):

"In the absence of the Chairman of the Board and the Chairman of the Finance Committee, the President shall preside at all meetings of the stockholders and of the Board of Directors. Subject to the Board of Directors and the Finance Committee, he shall have general charge of the business of the corporation relating to manufacturing, mining, and transportation, and general operation. He shall keep the Board of Directors and the Finance Committee and the Chairman of the Board and the Chairman of the Finance Committee fully informed, and shall freely consult them concerning the business of the corporation in his charge. He may sign and execute all authorized bonds, contracts, checks, or other obligations in the name of the corporation, and with the Treasurer or an Assistant Treasurer may sign all certificates of the shares of the capital stock of the corporation. He shall do and perform such other duties as from time to time may be assigned to him by the Board of Directors."

37. The Steel Corporation is not an operating company. That is, it does not manufacture, mine, produce, or transport any
289 article or commodity in its own corporate name, it is a "holding company", which owns and holds the capital stock of various other corporations, including the corporations named above (III, para. 1) (R. 198).

Terms of Trackage Agreement with Chicago & Eastern Illinois Railroad Company Directed By, and Consummated for Benefit of Steel Corporation, and Solely in Interest of its Traffic

38. (a) By an agreement (Gov. Ex. Y) executed February 1, 1909, between the Chicago & Eastern Illinois Railroad Company and said Chicago, Lake Shore & Eastern Railway Company (operated by

defendant since June 1, 1909, under lease), the latter acquired the right to operate its locomotives, trains, and cars over the lines of railroad and the pertinent facilities of the former (the Lake Shore Company's capital stock being owned by the Illinois Steel Company, whose capital stock, in turn, is owned by the Steel Corporation, infra, pp. 7–8). For such trackage rights the Lake Shore Company agreed to pay the Eastern Illinois Company $1.00 for each mile that its trains carrying 1,800 tons or less moved over certain specified lines of the Eastern Illinois Company, and 75 cents for each mile its trains carrying 1,800 tons or less moved over certain other tracks of the Eastern Illinois Company; and for each train of the Lake Shore Company exceeding in weight 1,800 tons, it paid proportionately larger amounts per train mile, said payments being based upon the intention of the Lake Shore Company that its trains should carry loads only on the inbound movement to subsidiaries of the Steel Corporation, the outbound movement being "empty." A minimum compensation, however, of $120,000 a year was required to be paid by the Lake Shore Company for such trackage rights (Gov. Ex. Y, pp. 5 and 6).

(b) The purpose of the trackage agreement was to enable the Lake Shore Company to perform, with its own locomotives, trains, and cars, the entire haul of traffic to plants and facilities of the Illinois Steel Company and other subsidiaries of the Steel Corporation in the Chicago area, from certain mining and other companies owned by the Steel Corporation and producing coal, coke, limestone, and other raw materials at or near Westville and Sidell, Illinois, and at points including Clinton in Indiana, all of which points were served by the Eastern Illinois Company, which, prior to the trackage agreement, participated with the Lake Shore Company in
290 transporting this traffic, and received its division of the jointly published tariff rates (R. 71–74). By said agreement the Lake Shore Company avoided the necessity of dividing with the Eastern Illinois Company the freight revenue accruing from their joint freight rates on traffic from the mining and producing companies to the plants of the Illinois Steel Company and other subsidiaries of the Steel Corporation in the Chicago district.

(c) Article II, Section 4, of said agreement provided as follows (Gov. Ex. Y, p. 7):

"During the entire term of this agreement the Lake Shore Company will transport over the Eastern Illinois Lines all coal, coke, limestone, and other commodities which the Lake Shore Company shall carry from any mine, quarry, plant, or place reached by any of the Eastern Illinois Lines, for the use of the Illinois Steel Company, the United States Steel Corporation, or any other company or plant in which either of them is interested as a stockholder or otherwise."

Article III, Section 4, of the agreement (Gov. Ex. Y, p. 9) provided in part:

"It is the intent of this agreement that the Lake Shore Company shall not, unless required by law so to do, engage in passenger traffic or in any traffic which both originates at and is destined to points on the Eastern Illinois Lines, nor in any traffic that may compete with the traffic of the Eastern Illinois Company, except freight traffic destined to or from points on the railway lines owned or operated by the Lake Shore Company; and except, further, coal, coke, limestone, and other supplies mined, manufactured, or acquired by the Illinois Steel Company or the United States Steel Corporation, or any of the companies which either of them owns or is interested in as a stockholder or otherwise, and which coal, coke, limestone, or other supplies originate at points now or hereafter reached by the Eastern Illinois Lines and are to be used in the operation of the properties of the Illinois Steel Company or of the United States Steel Corporation, or any of the companies or properties in which either of them is interested as a stockholder or otherwise."

By virtue of this trackage agreement the Lake Shore Company (from Feb. 1, 1909, to June 1, 1909) and the defendant (from June 1, 1909, to the present time) have operated over the lines of the Eastern Illinois Company as a carrier of coal and stone only for the Illinois Steel Company and other subsidiaries of the Steel Corporation (Gov. Ex. C, p. 22, and quoted language last above).

291 (d) By supplemental agreement entered into between defendant and the Eastern Illinois Company, October 20, 1922, the trackage agreement was amended to the extent that defendant agreed to pay 2 cents per ton of 2,000 pounds in addition to the compensation paid to the Eastern Illinois Company under the original agreement (Gov. Ex. Y, last three pages inserted, and Gov. Ex. C, pp. 37–39). The increase in compensation under the agreement was not made by defendant until the matter had been thoroughly discussed with and approved by the Chairman of the Steel Corporation (Gov. Ex. C, pp. 3–6, 8–12, 24–30, and 34–36), whose opinion governed defendant's President "very largely * * * in a matter of this kind" (R. 82). Six days after the supplemental agreement had been executed the Chairman of the Steel Corporation directed defendant's President, who was also President of the Lake Shore Company, to have the Boards of Directors of the two companies "approve and ratify" the supplemental agreement (Gov. Ex. C, pp. 38–39). On December 20, 1922—two months after the agreement was executed—the defendant's Board of Directors entered a minute approving and ratifying the supplemental agreement (Gov. Ex. Y, last page).

(f) By virtue of the trackage agreement the defendant saved the difference between the compensation paid by it under the agreement and the amount formerly paid to the Eastern Illinois Company as its division of the joint rates, which difference was $51,830.51 per month, or $621,966.12 per annum on coal, coke, and other raw materials hauled for subsidiaries of the Steel Corporation, thus ultimately

benefiting the treasury of the Steel Corporation by that amount (since the Steel Corporation owns both the defendant's railroad and the subsidiaries whose commodities were transported under the trackage agreement), and which amount would have been earned and received by the Eastern Illinois Company if these commodities of the Steel Corporation and its subsidiaries had been transported, as they previously had been, by the Eastern Illinois Company and interchanged to defendant, and the revenues derived from the joint rates divided between defendant and the Eastern Illinois Com-
292 pany (Gov. Ex. C, pp. 16–23). The trackage agreement (Gov. Ex. Y) was effective for a period of 50 years (February 1, 1909, to January 31, 1959). Over that period and at the annual saving just stated the treasury of the United States Steel Corporation will have been benefited in the amount of $31,098,606.00.

(g) In negotiating with respect to additional compensation under the trackage agreement in 1922, prior to execution of the supplemental agreement, defendant's President furnished to a director of the Eastern Illinois Company a statement of the latter's earnings, totalling $1,330,003.00, on tonnage hauled by it for subsidiaries of the Steel Corporation in 1921, and thereupon stated to the director (Gov. Ex. C, pp. 31–32, 34–35, and see R. 80–81, showing that E. Shearson was a director of and a large stockholder in the Eastern Illinois road), that:

"The Steel Corporation through its various subsidiary companies contributes quite a bit to the gross earnings of the C., and E. I. road, and I think you will quite agree with me that the Corporation's traffic is very desirable business, and it is in my mind a worth while saving, this tonnage and earnings to the C., and E. I. R. R. By far the larger part of this tonnage is competitive."

(h) During defendant's negotiations with the Eastern Illinois Company concerning the increased compensation of the latter under the trackage agreement, the Chairman of the Steel Corporation directed defendant's President to purchase an option for trackage rights between the same points over the Chicago, Terre Haute and Southeastern Railway, and that "then you will be in better position to talk to C., & E. I. R. R." (Gov. Ex. C, pp. 5–6, 8–12, 24–30). Among the terms agreed upon by defendant and the Southeastern Railway (which was owned and operated by the Chicago, Milwaukee & St. Paul Railway Company) was that the latter should receive a minimum compensation of $100,000 per year; that the Lake Shore road (operated by defendant under lease) should advance to the Milwaukee Company the cost of constructing branches and spurs necessary to reach mines and quarries of the subsidiaries of the Steel Corporation; and that (Gov. Ex. C, pp. 24 and 25):

293 "If the Lake Shore is prevented in any way from using its trackage rights then the Milwaukee Company is thereafter to pay to the Lake Shore Company 40% of the divisions which it receives in connection with the E., J. & E. on traffic originating at

the mines and quarries to which branches, spurs, etc., are built in accordance with contract and which traffic moves to the Illinois Steel Company and allied companies until the Lake Shore is paid the full amount of its advances."

(i) The possibility of arranging for trackage rights over still other routes was considered by defendant with the Chairman of the Steel Corporation (Gov. Ex. C, pp. 26, 29–30), including the cost and benefit to defendant of building its own railroad to the coal mines and stone quarries of the Steel Corporation's subsidiaries (Gov. Ex. C, p. 22).

Lease of Lake Shore Company to Defendant Dominated and Controlled by Steel Corporation and Executed Solely for Its Benefit

39. (a) By a lease agreement made June 1, 1909 (Gov. Ex. X), said Lake Shore Railroad, and all its tracks, rolling stock, and other facilities was leased for a term of 60 years to the defendant. By this lease the defendant took over the operation of the Lake Shore road, and all its existing obligations and duties, contractual and otherwise. The stock of the Lake Shore road was owned by the Illinois Steel Company, which was the principal shipper served by the road, most of its trackage being located within the Illinois Steel Company's plant at Gary, Ind., with an outside connection with the defendant and other carriers (Gov. Ex. O). The stock of the Illinois Steel Company was in turn owned by the Steel Corporation, which also owns all of defendant's stock (*Infra*, III, pp. 7–8). A. F. Banks served as President of both roads (Gov. Ex. X). The proposition to bring the two roads together by lease was, by their President, brought to the attention of the Chairman of the Steel Corporation after an investigation by the Interstate Commerce Commission concerning divisions of published rates and allowances to terminal or so-called "industrial railroads" (Gov. Ex. B, pp. 1–11). He warned the Steel Corporation's Chairman that the Commission might take action which would deprive the Lake Shore road of
294 divisions received by it from its connections out of published tariff rates and compel it to accept only a switching fee for the services rendered by it in handling the traffic of the Illinois Steel Company from its plants to nearby connections with other carriers, and pointed out that it would be to the best interests of the Steel Corporation to have the lease made because, with the greater mileage of defendant's lines the two roads, when operated as one, would have sufficient mileage of track to make their combined earnings appear more in line, per mile of track, with those of other carriers, and thus be in a stronger position to defend the Lake Shore Road's divisions on traffic of the Illinois Steel Company before the Interstate Commerce Commission.

(b) Among other reasons urged by the President of defendant and the Lake Shore road upon the Chairman of the Steel Corporation in support of the proposed lease were the following:

"Because of the fact that the E., J. & E. business today is that of a Common Carrier and seventy-five percent of its tonnage and revenue is derived from shipments other than those of the United States Steel Corporation or its constituent companies, were it the owner or lessee of the C., L. S. & E. R. R., the Interstate Commerce Commission could not take the position that the E., J. & E. Road served only the Illinois Steel Company, and was therefore only a terminal road organized for the purpose of securing larger divisions, which is another name for rebates. Besides, the earnings of the C., L. S. & E. Ry. Co. when spread over the total mileage of the two roads, would not show up so abnormally large.

"I believe that it would be the best thing for the Corporation to have the E., J. & E. Road, assume control, either by purchase or lease, of the C., L. S. & E. Road, and operate the C., L. S. & E. Road as a part of the E., J. & E. Road.

"As to the earnings of the C., L. S. & E. Road. Any interest that the Illinois Steel Company has in the C., L. S. & E. is simply a question of bookkeeping, and Mr. Filbert can devise ways and means of over-coming any difficulty in that direction. Any profits made one way or the other for the Corporation as a whole, and how it should be distributed, is a matter that can be determined upon by the Corporation; so long as we keep our profits at home, the Corporation is not the loser (Gov. Ex. B, pp. 1-2).

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"I do not want to appear persistent, but I do feel that the C., L. S. & E. Ry. will again be attacked by the Interstate Commerce Commission on the ground of its being a purely Terminal or Switching Road, and I believe it to be to the best interests of the Corporation if a lease of the C., L. S. & E. Road was made to the E., J. & E. Road. The terms of the lease could be made to the E., J. & E. Road. The terms of the lease could be made mutually satisfactory and without prejudice to the Illinois Steel Company.

295 "The earnings of the C., L. S. & E. Road for twelve months ending June 30th, 1905, was $4,323,692.69; the earnings of the E., J. & E. Road for the same period was $2,230,114.87, a combined gross earnings of $6,553,807.56.

"The mileage of the E., J. & E. Road, including main line only, not considering our double tracks or side tracks, is 235.06 miles; the mileage of the C., L. S. & E. main line, not including any yards or second track, but including leased tracks, or tracks over which the C., L. S. & E. have trackage rights, is 198.95 miles, making the combined mileage of both Roads 434.01 miles, giving an average earnings, per mile, to the E., J. & E. and C., L. S. E. Rys. combined of $15,100.00 per mile (Gov. Ex. B, p. 3).

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"By leasing the C., L. S. & E. Ry. to the E., J. & E. Road, it would, in my mind, stop all, further talk or action against the C., L. S. & E. Ry. for being a strictly industrial railroad, as the E., J. & E. Ry. today derives seventy-five per cent of its earnings from business other than that of the constituent companies of the Corporation, and over half of the 25% of the business which the E., J. & E. handles for constituent companies of the United States Steel Corporation, is business that the E., J. & E. Railroad enjoyed before the formation of the United States Steel Corporation or the formation of the Federal Steel Company (Gov. Ex. B, p. 4).

* * * * * * *

"All of the Eastern Roads are making a very determined fight to eliminate divisions with so-called industrial roads and terminal roads, giving them in lieu of divisions a nominal switching charge. If the E., J. & E. Ry. was operating the C., L. S. & E. Ry. under lease, it would then be part of the E., J. & E. Road, and we could, with propriety, maintain our position of refusing to accept switching rates in lieu of divisions, even on our short hauls, for the reason that we are willing to accept the same earnings for longer hauls than we do for the shorter hauls. * * *

"As to the net earnings of the E., J. & E. Road, and as to the basis on which a lease of the C., L. S. & E. Ry. to the E., J. & E. should be made, the U. S. Steel Corporation being owners of both properties, this matter could easily be arranged, and I believe if the lease was made we can materially reduce the operating costs of the Illinois Steel Company by reducing the rates between Buffington and South Chicago, rates that we now hold at a rather high figure in order to maintain our divisions that we exact from our connections, a matter that you are thoroughly familiar with, as it was talked over very fully between you, Mr. Knapp, and myself when the subject of coke divisions was under consideration.

"I would be very glad, indeed, to have you consider the suggestions I have made, and advise me if you do not think it advisable to arrange to bring the two Roads together (Gov. Ex. B, p. 5).

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296 "After reading the President's message to Congress, I am more firmly convinced than ever of the urgent necessity of putting these two properties together. Congress will undoubtedly pass a law giving greater authority to the Interstate Commerce Commission, as special mention was made by the President in reference to Terminal and so-called Industrial Roads.

"It is unfortunate that the C., L. S. & E. Ry serves practically one industry, the Illinois Steel Company, and I believe the Corporation will be benefited, as a whole, by the consolidation of the C., L. S. & E. with the E., L. & E. Railway. This consolidation will, undoubtedly, prove a hardship to the Illinois Steel Company, but it is better (in my mind) that the Illinois Steel Company, as a constituent com-

pany, should suffer some loss and the Corporation benefit by the same, then to have the Illinois Steel Company suffer a loss and the Corporation not benefit by the same.

"The question of allowances to Terminal Railroads will not down, and if other so-called Industrial Railroads will accept switching charge of $2.00 or $3.00 per car for services practically identical with that performed by the C., L. S. & E. Ry. then it is only a question of time (and a short time at that) when the C., L. S. & E. Ry. is forced to give up its divisions and accept a nominal switching charge for its service.

"By the consolidation of the C., L. S. & E. Ry. with the E., J. & E. Ry. and the E., J. & E. Road being the operating Company, we fortify our position and can demand, and it can be legally allowed, in my opinion, the same divisions on business to and from the Illinois Steel Company that it receives on business for all other of its patrons.

"It has been suggested to me by Mr. Hyman of the Illinois Steel Company that one solution of this problem would be for the Federal Steel Company to take over the bonds of the C., L. S. & E. Road; and the Illinois Steel Company to buy the stock of the E., J. & E. Road from the Federal Steel Company, consolidate the two roads, and let all the profits accruing to the E., J. & E. Road go to the Illinois Steel Company, thus reducing the manufacturing cost of the Illinois Steel Company by taking up the profits of the E., J. & E. Road. I do not believe that would be policy, and for this reason: 75% of the present business of the E., J. & E. Road is derived from business other than that of the Corporation. I mean by that, that 75% of the present earnings of the E., J. & E. Ry. is received on its local business and its through business that has no connection in any shape or manner with the business of the United States Steel Corporation. If it were known, and, of course, it would be known, that the Illinois Steel Company was the owner of the E., J. & E. Road, we would be placed in the position of being attacked by every shipper over the E., J. & E. Ry., with discriminating in our cars and service in favor of the Illinois Steel Company. That charge has recently been made to me by the Coal Operators on the E., J. & E. Road, who stated that prior to the formation of the Federal Steel Company, they were at all times amply supplied with E., J. & E. equipment for their coal mines; that since the formation of the Federal Steel Company, that the Illinois Steel Company has had the first call on E., J. & E. equipment, and that their mines have not been supplied with cars. Unfortunately this is true to a certain extent, as we have endeavored at all times to take care of the constitu-
297 ent companies of the Corporation in supplying them with cars.

"I do not know whether the Illinois Steel Company could legally own the E., J. & E. Road, but if they could, I do not believe it would be policy for the Steel Company to be the owner, and I think the Corporation would be placed in a bad light if they allowed the Illinois Steel Company to be the owner of the E., J. & E. Road.

I feel that the Bureau of Commerce and Labor will undoubtedly make investigation into the business of the Steel Corporation the same as they have into the business of the so-called Beef Trust, and I think that the Corporation would be in a better shape if it would show that the C., L. S. & E. Ry. was leased, on a reasonable basis, to the E., J. & E. Road, and that the rental of $500,000.00 per year now paid by the C., L. S. & E. Ry. to the Illinois Steel Co. for the use of the ground on which its tracks are laid in the various plants of the Illinois Steel Co., was abandoned. I do not believe this lease would be looked upon with favor by the investigating committee of the Bureau of Commerce and Labor. I think they would call it a subterfuge. I believe it would be the part of wisdom for the Corporation to put its railroads on a strictly legitimate and high plained basis. The revenues and profits would not get away from the Corporation; it would affect the Illinois Steel Company.

"As to any adjustments that might be made of the earnings of the E., J. & E. Ry. should it take over the C., L. S. & E. Road, that would probably be a question of book-keeping in the New York office, and as to that I have no suggestions to offer. My only thought is to get ourselves in as clean business shape at as early a date as possible, so as to prevent any adverse criticism in regard to the relations between the Illinois Steel Company and its railroads; and to fortify our position so that we can demand legally and reasonably, and accept divisions that should be accorded by our connection to us, not only on Illinois Steel Company business, but on all other business that originates or terminates on the line of the E., J. & E. Road. The President's message deals with fair and equitable divisions that should be accorded by the larger roads, or Trunk Lines, to the smaller roads connecting with such Trunk Lines. The consolidation of the E., J. & E. and the C., L. S. & E. Railways would give to the E., J. & E. fair divisions, not only on its present traffic, but on the traffic that it would handle to and from the Illinois Steel Company.

"I shall be pleased to have an early reply from you as to your wishes in this matter" (Gov. Ex. B, pp. 7–10).

After the proposed lease was considered in conferences between A. F. Banks, President of both roads, K. K. Knapp, Counsel for both roads and for the Illinois Steel Company and all other subsidiaries of the Steel Corporation in the Chicago district, and E. J. Buffington, President of the Illinois Steel Company, which owned the capital stock of the Lake Shore road, the latter wrote the Chairman of the Steel Corporation as follows:

"Mr. Banks, Mr. Knapp, and I have carefully considered the suggestion to lease the C., L. S. & E. Ry. to the E., J. & E. Ry.,
298 and have concluded to recommend that it be done, in the light of recent developments concerning railroad matters. Mr. Knapp is of the opinion that the carrying out of this suggestion will tend towards safeguarding the freight divisions, now being allowed

the C., L. S. & E. Ry. by its connecting lines against a reduction of such divisions under some possible application of the Interstate Commerce Laws. These allowances of freight divisions constitute a large part of the earnings of the C., L. S. & E. and of course should be safeguarded to the furtherest extent. I fear, however, that this will result in separating the earnings of the Railroad so far from the earnings of the Illinois Steel Company that our showing of costs and profits will be materially disadvantaged. Perhaps our accounting officers can devise means for overcoming this objection, in part at least" (Gov. Ex. B, p. 11).

While the proposal to combine the two roads by lease was under consideration, the Steel Corporation directed the President of the two roads to advise it specifically on the following points (Gov. Ex. B. pp. 14–15):

"*What Advantages Will Accrue From the Merger:*

"(1) From the standpoint of traffic relations with connecting trunk lines.

"(2) In relations with the State and Federal authorities and commissions.

"(3) From a taxation point of view.

"(4) From an operating point of view.

"*How Would it Affect Relations With Illinois Steel Company:*

"(1) Would the present plan of operating tracks within the mill yards be continued, or would some new arrangement be made? If so, what arrangement? The Illinois Steel Company could not afford, from a manufacturing cost standpoint, to release the C., L. S. & E. without getting this service at cost. How could this be accomplished?

"(2) Would the $500,000 now paid Illinois Steel annually for rental of land in mill yards on which C., L. S. & E. tracks are located, be continued?

"(3) If the merger were made, on what basis would the lessee make rates for Inter-Mill switching service for Illinois Steel, i. e., between South-Buffington—Coke Storage Yard—Gary Plant. The Illinois Steel could not, as a manufacturing cost proposition, afford to release its interest in the C., L. S. & E. if it were obliged to pay for this class of service on a commodity and weight basis.

299 "(4) Would the merger enable the lessee to put into effect any lesser rates than are now charged by C., L. S. & E. for local service, particularly between South and Joliet?"

In making his answer to the Chairman of the Steel Corporation, the President of the two roads stated in answer to the first question "(1)" the substance of his previously stated reasons for merging the two roads (already quoted above) by pointing out that the Lake Shore road performed a short haul of about 11 miles on the larger portion of traffic received by it from connecting lines, that the Interstate Commerce Commission had intimated in its report upon an investigation that the Lake Shore road was merely a terminal or

switching road and performed only a switching service, for which it was entitled only to switching revenue instead of the divisions of joint through rates, and that by combining the two roads into one the divisions received by the Lake Shore could be better defended before the Commission, because of the greater mileage over which to spread the combined earnings of the two roads. In this connection he stated in part as follows (Gov. Ex. B, p. 20):

"Whereas, if the Chicago, Lake Shore & Eastern Railway remained an independent road, it could be claimed that it has no freight business other than that of the Illinois Steel Company's, and, therefore, is only a terminal road serving the Illinois Steel Company, the Indiana Steel Company, and the Cement Plant; that the Illinois Steel Company is its owner, and, therefore, derives all the benefit of the earnings accruing to the Chicago, Lake Shore & Eastern Railway.

"On the other hand, if the Chicago, Lake Shore & Eastern Railway is leased to the Elgin, Joliet & Eastern Road, the earnings of the combined roads are spread over a combined mileage, showing a less earning, per mile, of the combined roads than would be shown, per mile, if the Chicago, Lake Shore & Eastern Road is an independent line.

"The two roads together, in my opinion, are in a better position to retain the present divisions than the Chicago, Lake Shore & Eastern Road will be if it remains an independent property. If the roads are allowed to remain separate, I think it is only a question of a short time until all connections of the Chicago, Lake Shore & Eastern Railway bring before the Interstate Commerce Commission the question of the Chicago, Lake Shore & Eastern Railway Company's earnings and divisions and demand that the Chicago, Lake Shore & Eastern Road be allowed only a switching rate instead of divisions. If that is done, it will mean a very great loss to the Corporation."

300 In answer to the four questions, quoted above, as to how the proposed lease would "affect relations with the Illinois Steel Company" he responded to the questions, respectively, as follows (Gov. Ex. B, pp. 22–24):

"(1) We believe that if the Roads were merged that we can assign a sufficient number of engines to the Illinois Steel Company and the Indiana Steel Company to do all the internal switching, and in consideration of the Superintendents of the Mills at South Chicago and at Gary assuming the supervision of these employes, that we can pay all expenses of the engines and crews for doing the internal work, and by so doing, they would then get all of their internal switching performed without cost. This, I understand, is practically the same practice that governs with the Union Road at the Carnegie Steel Company's Plants.

"(2) I should, in answer to that query, say 'No.' I have never felt that we could defend this rental that is now being paid by

the Railroad to the Illinois Steel Company for tracks on the Illinois Steel Company's grounds inside their mill yard, which tracks are wholly and solely for the purpose of serving the Illinois Steel Company. I think it is perfectly proper for the Railroad to own the tracks and to maintain them, but to pay a rental of $500,000.00 per year for the use of the ground on which to lay the tracks, to perform a service wholly and solely for one company, is a proposition that could not be defended before any Court or the Interstate Commerce Commission, and I am afraid that if the matter is ever brought up by the Commission it will prove a very troublesome question for the Corporation, and I think that the sooner this matter can be disposed of the better it will be for the Corporation.

"(3) I believe that if the merger were made we would be in a better position to defend a low commodity rate on granulated cinders from South to Buffington than now prevails. In other words, the Interstate Commerce Commission will not object to a rate being published by a Railroad that is open to all shippers. We have, however, refrained from making a less rate between South Chicago and Buffington than the minimum allowance that we receive from connecting lines on other commodities. The reason for this was our attempt to defend the divisions that the Chicago, Lake Shore & Eastern Railway receives on connecting-line business. I think our practice in the past has been correct, but I believe that with the merging of the Roads we can make a reduction. I think, further, that we could move coke from the storage yards to South Works and to Gary at a nominal charge, giving as our reasons for so doing that the Steel Company has this storage yard for the purpose of releasing our equipment promptly, thus benefiting the Railroads, and that we should not impose a burden on the receiver of the freight in his efforts to facilitate the movement of cars, and expedite the movement of business.

"(4) I believe that we could make a less rate on iron ore
301 from South Chicago to Joliet than we now have, and could do that by agreement with other Railroads who handle no iron ore. As to reduced rates on other commodities, I do not believe we could make any reduction for the reason we must charge the same rates between South Chicago and Joliet as the Chicago & Alton, Santa Fe and Rock Island are charging between Chicago and Joliet. The Steel Corporation must not, by its own road, put in rates for its own constituent companies that serve to reduce the rates of other Railroads on shipments made by its patrons and competitors of the Steel Company. In other words, we must assist our competing railroads to get reasonable compensation for their service from outside parties, and to do this we must charge reasonable rates for handling the business of our constituent companies."

Thereafter, the Chairman of the Steel Corporation directed the President of the two roads to have a form of lease drawn up and sent to the Chairman "for consideration", and stated, "I suppose

so far as the interests of the Illinois Steel Company are concerned the question of the rental to be paid is the one to be considered" (Gov. Ex. B, p. 12). The lease was executed and became effective on June 1, 1909 (Gov. Ex. X).

(c) For the property covered by the lease the defendant agreed to make the following guaranty and rental payments (Gov. Ex. X, pp. 4–10):

(1) To guarantee, unconditionally, the payment of principal and interest upon all the First Mortgage Gold Bonds of the Lake Shore Company issued under deed of trust June 1, 1909, the outstanding amount thereof being $9,000,000.

(2) To pay all taxes and assessments upon or against the Lake Shore Company's property and its capital stock.

(3) To deposit with the Lake Shore Company $4,000,000 in cash within thirty days after execution of the lease, as security for defendant's faithful performance of the lease covenants, the Lake Shore Company being authorized to invest said sum and to obtain all income therefrom, but to refund the principal amount thereof to defendant upon termination of the lease, less such amounts as it might find necessary to disburse in order to make itself whole from any failure or omission of defendant to perform its covenants.

(4) To pay either the Lake Shore Company or the parties entitled thereto the amount equivalent to the interest coupons
302 on Lake Shore Company's First-Mortgage Gold Bonds, then outstanding in the amount of $9,000,000, and to pay interest coupons at the same rate on any new bonded indebtedness incurred by the Lake Shore Company in the construction or acquisition of additional railroad tracks and other similar improvements and appurtenances to its railroad.

(5) To pay the Lake Shore Company 5 per cent interest on costs incurred by it of constructing or acquiring additional track or other property with funds not derived through sale of additional capital stock or first mortgage bonds.

(6) To pay the Lake Shore Company the sum of $600,000 per annum, and if defendant's surplus earnings for any year were insufficient to pay said sum within the year, then said sum or any unpaid portion thereof should be paid by defendant out of its earnings in future years.

(7) To pay the Lake Shore Company an amount equivalent to 7 per cent per annum on the outstanding capital stock of the Lake Shore Company and on such additional stock as the Lake Shore Company might issue in the future as provided for in the lease, and if defendant's surplus earnings were insufficient to pay this amount in any one year, said amount or any unpaid portion thereof would be paid by defendant out of such earnings in future years.

(8) To pay the Lake Shore Company such proportionate part of the remainder of defendant's surplus earnings for any year as twice the par value of the then outstanding capital stock of the Lake

Shore Company bears to the sum of the par value of the then outstanding capital stock of defendant, plus twice the par value of the then outstanding capital stock of the Lake Shore Company.

It was also mutually agreed that neither party should increase the amount of its capital stock or its bonded indebtedness, or create any other bonded indebtedness without the written consent of the other party, except that the Lake Shore Company could, without such written consent of the defendant, increase its capital
303 stock or bonded indebtedness to pay the cost to defendant of constructing or acquiring at defendant's election, additional tracks or improvements upon the leased property.

(d) During the 55 month period, June 1, 1909, to December 31, 1913, defendant paid to the Lake Shore Company, pursuant to the above stated terms of the lease, a total of $9,476,157.53, consisting of the following items (Gov. Ex. B, p. 37):

Interest on bonds	$1,856,250.00
Dividends on E., J. & E. stock, $160,000.00 per year	733,333.34
18/28's of surplus, June 1st to November 30th, 1909	277,917.73
18/28's of surplus, December 1st, 1909, to December 31st, 1913 (less Contingent Fund, $72,154.26)	578,694.61
Rental, $600,000.00 per year, June 1st, 1909, to December 31st, 1913	2,800,000.00
Interest on construction expenditures	342,461.85
Rental 7% annually on $9,000,000.00 stock, June 1st, 1909, to December 31st, 1913	2,887,500.00
Total	9,476,157.53

The total payments thus received by the Lake Shore Company were $7,277,445.68 in excess of the amount of interest on its bonds and interest on its construction expenditures, the excess being 16.6 per cent per year on its capital stock of $9,000,000.

During the same period the total amount left to defendant after making the above stated payments to the Lake Shore Company was $3,867,562.41. This amount was $1,575,895.74 in excess of the amount necessary to pay interest on defendant's outstanding bonds, and the excess amounted to approximately 5.7 per cent on defendant's capital stock, or 10.9 per cent less than the surplus received by the Lake Shore Company on its capital stock pursuant to the terms of the lease. The Lake Shore Company's surplus, after paying interest on its bonds and 7 per cent on its stock, was $4,389,945.68 for this 55 month
304 period, while defendant's surplus for the same period was only $475,895.74 after paying interest on its bonds and 4 per cent on its capital stock (Gov. Ex. B, pp. 36–38).

(d) In 1912 the President of the defendant, who was also President of the Lake Shore Company, complained to the Steel Corporation that the lease was working a great hardship upon and was unfair to the defendant because of the amount of money defendant was required by the lease to pay to the Lake Shore Company, and asked that the defendant be relieved of a part of the financial burdens imposed by the lease upon its earnings. He recommended that the lease be changed so that the Lake Shore Company would

receive (1) 4 per cent on $4,000,000 of defendant's stock held by the Lake Shore Company instead of 7 per cent as provided in the lease, and (2) 5 per cent on the outstanding stock of the Lake Shore Company in amount of $9,000,000, instead of 7 per cent as provided by the lease. After suggesting these changes, he stated to the Steel Corporation (Gov. Ex. B, p. 30) that:

"I will admit that under the common ownership of the stock of these railroads, namely, the E., J. & E. and the C., L. S. & E. Road, it is immaterial through what channels the earnings of the railroad property should arrive in the treasury of the United States Steel Corporation, but in all fairness to the E., J. & E. and the individual companies, I think this change, above suggested, should be made in the lease."

In 1914 defendant's President renewed his request that the rental payments under the lease be modified, and after setting forth the details of the sums paid as rental to the Lake Shore Company for the period June 1, 1909, to December 31, 1913 (set forth under Paragraph (d), p. 34, above), the total of which was $9,476,157.53, he stated to the Steel Corporation (Gov. Ex. B, pp. 38–41) as follows:

"I think you will admit that after four years and seven months operation under the present lease that the E., J. & E. Road having been able to only accumulate a surplus (after paying 4% on its stock) amounting to $475,895.74—(and if this amount is then charged with the property abandoned, it would make its surplus for this period $406,155.88) it is not a sufficient amount. If the lease is allowed to continue, there is no show for the E., J. & E. Road to be able to make any improvements, additions, or betterments to its property out of its earnings. This is unfair in my opinion. I think the lease when it was originally drawn
305 and so stated was unfair to the E., J. & E. Road. The four years and seven months operation has proven that the lease is a burden to the E., J. & E. Road.

"You will remember that our earnings on coke shipments have been decreased about 70% on account of the decision that we should no longer receive a rate per ton but should receive a given rate per car.

"We have about 140 miles of track to maintain within the Gary Plant, which costs us more money per mile for maintenance and renewals than our main line mileage. The Steel Company operates as many or more switch engines within the Gary plant than the E., J. & E. Railroad and contributes nothing whatever to the maintenance and renewals of the tracks used by their engines. Many of the tracks are used exclusively by their engines.

"We have a thousand coke cars that cost us about $150,000 last year for steel plates to make them suitable for carrying the by-products coke. These cars were originally latticed steel cars and had to be made solid bodies so as to prevent the wasting of the coke. The revenue received by the railroad for the handling of this coke does not compensate it for its investment and the service its performs.

"When there is slack business in the Steel Company's plant, we cannot reduce our operating expenses in proportion to the reduction of the plant. As an illustration, at Joliet there are four blast furnaces. The Steel Company can close down one furnace or 25% of their capacity and yet we cannot withdraw a single man or a single engine on account of the same. We have less work for our engines to do but the other three blast furnaces must be taken care of and therefore our expenses are not reduced. They can make a further reduction by taking out another blast furnace, thus reducing their capacity 50% and still we will not be able to take off a single man or an engine engaged in serving their furnaces.

"The results of our operation since the first of the year, under our present lease, shows a balance of $18,171.70, or a deficit of $325,161.62 in amount necessary to pay 4% on E., J. & E. and 7% on C., L. S. & E. stock, and the dividends on C., L. S. & E. stock is cumulative. This burden should not be placed upon the E., J. & E. Road. If we earn a surplus, I think it should be divided between the two companies, but our obligations beyond the interest on their bonds and the bonds of the E., J. & E. should not be cumulative.

* * * * * * *

"I think you fully realize the position of the E., J. & E. Ry. I am not looking for any advantage for either one of the two companies; desiring only that this lease should now be amended so it shall be fair to both companies, and as above stated, as the lease now stands, I believe it to be unfair to the E., J. & E. Road. If you can concur in my ideas, or can offer me any suggestions or criticisms in this matter, I will be very glad indeed to have you do so, or, if this letter will help you in any way to formulate a plan to be laid before Judge Gary, I will be glad to have you use it."

306 After conference between E. H. Gary, Chairman of the Steel Corporation, A. F. Banks, defendant's President and also President of the Lake Shore Company, and E. J. Buffington, President, Illinois Steel Company, the Chairman of the Steel Corporation, wrote a joint letter dated June 26, 1914, to Messrs. Banks and Buffington, setting forth the modifications which they had agreed in their conference to make in the rental payments under the lease, which letter concluded as follows (Gov. Ex. B, pp. 42–43):

"It is understood you will have Mr. Knapp at his early convenience prepare a revision of the present lease so as to reflect the foregoing modifications and understandings. When this draft is made please submit it through Mr. Filbert to Mr. MacVeagh for review before executing it."

An amendment to the lease was executed and became effective December 1, 1913 (Gov. Ex. X2), the only substantial change in the rental payments being a reduction in the amount of the flat annual sum paid to the Lake Shore Company of $600,000, which was reduced to $250,000 annually, and this item of the rent was by the amendment to be non-cumulative instead of cumulative as provided by the original lease.

(e) In 1917 defendant's President, who was also President of the Lake Shore Company, again complained to the Steel Corporation that the rental payments under the lease were unfair and unduly burdensome to the defendant. In this connection he stated that (Gov. Ex. B, pp. 44–45):

"Mr. Knapp calls your attention to the fact that I think in making this new lease we should now give to the Elgin, Joliet and Eastern Ry. a fair deal, and I have never felt that the C., L. S. & E. should receive Two Dollars for each share of its stock to One Dollar for each share of the stock of the E., J. & E. Ry., in the distribution of any surplus earnings.

"The E., J. & E. Ry. Co. has been compelled (because it was good business and for the interest of the Corporation to do so) to expend large amounts of money for shops and other facilities at Joliet to take care of the power and cars of its own and the C., L. S. & E. road. We have larger facilities than are necessary for the E., J. & E. power and equipment, and if the roads were ever separated these facilities would be much larger than what we would require for the E., J. & E. Ry. Co. Again, when business was exceedingly dull in the steel business, and mills in Chicago were operating on a 25% basis,
307 the E., J. & E. Ry. Co. carried the burdens of the C., L. S & E. and the E., J. & E. The E., J. & E. general business was good, while that on the C., L. S. & E. was very poor. Again, the C., L. S. & E. has been allowed to receive very large returns on its investment, while the E., J. & E. has been practically confined to the 4% on its stock. A further reason for giving the E., J. & E. a better division of surplus earnings is to avoid the payment of excess taxes on the part of the Corporation. All profits of the C., L. S. & E. Ry. Co. go to its owner—The Illinois Steel Co., helping to increase the already large earnings of the Illinois Steel Co., and that means as their earnings are greater that they pay a greater percentage of Income Tax, and that takes the money away from the Corporation, while the increase in earnings to the E., J. & E., under the proposed new division of earnings, would not be so large and, therefore, would not call for as high a rate of taxation, and I believe that the best interest of the Corporation would be conserved by granting at this time in the new lease what I consider an equitable division of surplus earnings after rentals and interest on bonds, and the 7% dividend on the C., L. S. & E. stock and 4% dividend on the E., J. & E. stock is provided for."

On December 21, 1917, the lease was further amended (Gov. Ex. X3), the principal effect of this amendment being to require the Lake Shore Company to set up a depreciation fund from which payments were to be made to defendant covering the latter's costs incurred in the maintenance of locomotives, engines, or other items of

rolling stock or equipment of the Lake Shore Company covered under the original lease, but the amendment required the defendant to pay as part of rental to the Lake Shore Company an annual amount equal to the amount set aside by the Lake Shore Company in said depreciation fund.

40. The terms, conditions, and provisions of said lease and the amendments thereto between the defendant and the Lake Shore Company were supervised, dominated, and controlled by the Steel Corporation.

41. The rental terms and conditions of said lease were and are particularly disadvantageous to the defendant and result in the dissipation of its earned revenues to the benefit and advantage of the Lake Shore Company, the Illinois Steel Company, and the Steel Corporation.

42. Said lease, although suggested originally by defendant's President, was entered into for the benefit and in the interest of the Steel Corporation, the principal purpose of combining the
308 two railroad common carrier properties being to create by that combination a change in the factual situation which might prevent and deter the Interstate Commerce Commission or other Governmental agencies from taking such action as would result in the Lake Shore Company receiving only a switching charge or fee for services rendered in transporting products of Illinois Steel Company from its plant to the connection of the Lake Shore Company with other railroads, and thus depriving the Lake Shore Company of the highly remunerative divisions of joint rates received by it from railroads with which it connected. The moneys received by the Lake Shore Company in the form of divisions went ultimately into the treasury of the Steel Corporation, which owns the Illinois Steel Company and which company in turn owns the Lake Shore Company.

43. The terms and conditions of said lease were and are arranged and managed so as to protect and perpetuate, as far as possible, the close relationship previously existing between the Illinois Steel Company and the Lake Shore Company in such matters as the construction and maintenance of intraplant tracks, switching, and service within the plants of the Illinois Steel Company.

44. The execution of said lease, and the amendments thereto, was not the result of bona fide bargaining or "armslength" dealing and negotiation between defendant and the Lake Shore Company, but, on the contrary, was the result of concerted and coordinated action of the President of these two railroad companies jointly with the officers of the Illinois Steel Company and the Steel Corporation.

45. The evidence shows that the execution of the lease was the result of coordination and cooperation between the President of these

two railroads, the President of the Illinois Steel Company, and the Chairman and other officers of the Steel Corporation, and, further, establishes the identity of interest and intimacy of relationship between the several corporations, and demonstrates the power, control, and domination which the Steel Corporation exerts over them because of its ownership of their capital stock.

309 Transportation Services Furnished by Defendant to Other Subsidiaries of the Steel Corporation, and Articles and Commodities Transported by Defendant in Which it Has an Interest.

46. (a) Defendant furnishes (Am. Pet. pp. 17–22, and App. B.; Ans. pp. 12–14), and for several years last past has furnished, railroad transportation service, including transportation in interstate commerce of articles and commodities other than timber and the manufactured products thereof, to the following-named plants of the Steel Corporation and certain of its subsidiaries above-named: (1) The Scott Street Works, owned by the American Steel & Wire Company, at Joliet, Illinois; (2) Gary Plant, owned by the American Bridge Company, at Gary, Indiana; (3) Gary Sheet Mill and Gary Tin Mill, owned by the American Sheet & Tin Plate Company, at Gary, Indiana; (4) Gary Works, at Gary, Indiana, Joliet Works, at Joliet, Illinois, and South Works, at South Chicago, Illinois, all owned by the Illinois Steel Company; (5) Gary Works, owned by the National Tube Company, at Gary, Indiana; and (6) Buffington Plant, owned by the Universal Atlas Cement Company, at Buffington, Indiana; and such railroad transportation service is the only railroad transportation service furnished during said period directly to said plants by any common carrier. Defendant constantly employs, and for several years last past has constantly employed, a large number of its yard locomotives in performing intraplant switching service for the subsidiaries of the Steel Corporation, hereinbefore in this paragraph named. Defendant furnishes, and for several years last past has furnished railroad transportation service, including transportation in interstate commerce of articles and commodities other than timber and the manufacured products thereof, to the Rockdale Works at Joliet, Illinois, and the Waukegan Works at Waukegan, Illinois, both of which are owned by the American Steel & Wire Company, hereinbefore referred to. Defendant transports, and for several years last past has transported, in the regular course of its business in interstate commerce, and by means of and pursuant to the agreement with the Chicago and Eastern Illinois
310 Railway Company, hereinbefore referred to, coal removed from mines which are owned by the United States Fuel Com-

pany and located at Westville, Illinois, notwithstanding that a large proportion of such coal is not necessary or intended for the use of defendant in the conduct of its business as a common carrier. Defendant transports, and for several years last past has transported, in the regular course of its business in interstate commerce through and over its connecting lines, coal removed from mines which are owned by the United States Coal & Coke Company and located at Gary, West Virginia, and Lynch, Kentucky, notwithstanding that a large proportion of such coal is not necessary or intended for the use of defendant in the conduct of its business as a common carrier.

(b) The total operating revenues of defendant for the year ending December 31, 1929, were approximately twenty-six million dollars ($26,000,000.00). Approximately sixty per centum (60%) of this amount accrued from the transportation of articles or commodities other than timber and the manufactured products thereof, which defendant, the Steel Corporation, or a corporation subsidiary of the Steel Corporation, either manufactured, mined, or produced, directly or under the authority of them, or one or more of them, owned, or in which they, or one or more of them, had an interest, and which were not necessary or intended for the use of defendant in the conduct of its business as a common carrier.

(c) Defendant transported in interstate commerce during the period intervening the calendar years 1927 and 1929, inclusive, and still transports in interstate commerce, articles and/or commodities, other than timber and the manufactured products thereof, which have been manufactured, mined, or produced by it or by the Steel Corporation, or by other corporations hereinbefore designated which are subsidiaries of the Steel Corporation, or under the authority of defendant or of the Steel Corporation or of other corporations hereinbefore designated which are subsidiaries of the Steel Corporation, or other corporations hereinbefore designated which are subsidiaries of the Steel Corporation own in whole or in part, or in which they,
or one or more of them, have an interest, direct or indirect,
311 which articles and/or commodities are exclusive of such articles and/or commodities as are necessary or intended for the use of defendant in the conduct of its business as a common carrier, to wit:

(1) bituminous coal, of which defendant transported in interstate commerce during the calendar year 1927 a total of 216,149 cars which contained a total of 11,967,517 tons, and during the calendar year 1928, 223,327 cars which contained a total of 12,396,595 tons, and during the calendar year 1929, 241,027 cars which contained a total of 13,429,831 tons, and during the calendar year 1930 transported in interstate commerce, and is still so transporting, large quantities thereof, of which total tonnage the Steel Corporation or subsidiaries

thereof consumed and are consuming approximately seventy per centum (70%) at plants owned by the said subsidiary corporations and located on defendant's railroad, which bituminous coal was mined in and from mines owned and controlled by the United States Fuel Company and located at Westville, Illinois, and mines owned and controlled by the United States Coal & Coke Company and located at Gary, West Virginia, and Lynch, Kentucky, transported in interstate commerce from said mines to the plants of the subsidiary corporations of the Steel Corporation, hereinbefore referred to, and owned during all the period of said transportation by the Steel Corporation or a subsidiary thereof;

(2) articles of iron and steel manufacture, of which defendant transported in interstate commerce, during the calendar year 1929, a total of 8,048,637 tons, of which approximately 81% was manufactured or produced by subsidiary corporations of the Steel Corporation or under the authority of one or more of them:

(3) coke, of which defendant transported in interstate commerce, during the calendar year 1929, a total of approximately 2,605,734 tons, and of which defendant transported approximately 2,562,997 tons in interstate commerce which was manufactured or produced at by-product ovens of the Illinois Steel Company at Gary, Indiana, and Joliet, Illinois, and transported to steel mills owned by the Illinois Steel Company at South Chicago, Illinois, and elsewhere, which coke was owned during all the period of said transportation by the Steel Corporation or a subsidiary thereof; and

(4) cement, of which defendant transported in interstate commerce, during the calendar year 1929, a total of approximately 1,043,081 tons, of which approximately 82% was manufactured by the Buffington, Indiana, plant owned by the Universal Atlas Cement Company.

Certain typical shipments of coal, which subsidiaries of the Steel Corporation mined during the calendar years 1929 or 1930, and which defendant transported in interstate commerce subsequently to January 1, 1930, notwithstanding that such coal was not necessary or intended for use of defendant in the conduct of its business as a common carrier, and certain typical shipments of other commodities, other than timber and the manufactured products thereof, produced or manufactured by subsidiaries of the Steel Corporation or under the authority of them, or one or more of them, or which they, or one or more of them, owned in whole or in part, or in which they, or one or more of them, had an interest, which defendant transported in interstate commerce, subsequently to January 1, 1930, exclusive of articles or commodities which were necessary or intended for the

use of defendant in the conduct of its business as a common carrier, are as follows:

312 Consignor	Shipping point	Commodity	Weight (Pounds)	Consignee	Destination	Route
United States Fuel Company	Westville, Ill.	Coal	132,980	I. S. Co.[1]	So. Chicago, Ill.	1 2
	Westville, Ill.	Coal	120,000	I. S. Co.	So. Chicago, Ill.	2
United States Coal & Coke Co.	Gary, W. Va.	Coal	154,400	I. S. Co.	Gary, Ind.	8
	Gary, W. Va.	Coal	117,400	I. S. Co.	Gary, Ind.	8
	Lynch, Ky.	Coal	103,600	I. S. Co.	Gary, Ind.	9
	Lynch, Ky.	Coal	106,000	I. S. Co.	Gary, Ind.	9
	Gary, Ind.	Car wheels	86,890	C. & N. W. Ry. Co.	Chicago, Ill.	1
	Gary, Ind.	Car wheels	65,080	C. & N. W. Ry. Co.	Chicago, Ill.	1
Illinois Steel Company	South Chicago, Ill.	Rails	78,280	M. F. & C. Works.	Chicago Hgts., Ill.	2
	South Chicago, Ill.	Plates	63,700	M. F. & C. Works.	Chicago Hgts., Ill.	2
	Joliet, Ill.	Angle bars	13,280	I. S. Co.	Gary, Ind.	3
	Joliet, Ill.	Angle bars	66,220	N. Y. C. R. R. Co.	Pine, Ind.	4
	Joliet, Ill.	Coke	79,100	I. S. Co.	So. Chicago, Ill.	2
	Joliet, Ill.	Coke	80,400	I. S. Co.	So. Chicago, Ill.	2
American Bridge Company.	Gary, Ind.	Plates and rivets.	86,010	C., B. & Q. R. R. Co.	Chicago, Ill.	5
	Gary, Ind.	Trusses	71,057	A., T. & S. F. Ry.	Chicago, Ill.	6
American Sheet & Tin Plate Company.	Gary, Ind.	Sheet steel	43,210	A. S. E. Co.	Aurora, Ill.	7
	Gary, Ind.	Waster sheets	65,580	R. W. M. Co.	Aurora, Ill.	7
American Steel & Wire Company.	Joliet, Ill.	Plain wire	38,401	N. T. Co.	Gary, Ind.	3
	Joliet, Ill.	Wire nails	40,232	F. L. Co.	Gary, Ind.	3
	Waukegan, Ill.	Steel rods	60,360	La. S. S. Co.	Hammond, Ind.	3
	Waukegan, Ill.	Steel rods	64,240	La. S. S. Co.	Hammond, Ind.	3
The National Tube Company.	Gary, Ind.	Pipe	87,400	C., R. I. & P. Ry.	So. Chicago, Ill.	3
	Gary, Ind.	Pipe	92,400	I. S. Co.	So. Chicago, Ill.	3
Universal Atlas Cement Company.	Buffington, Ind.	Cement	121,600	I. S. Co.	So. Chicago, Ill.	3
	Buffington, Ind.	Cement	121,600	I. S. Co.	So. Chicago, Ill.	3

[1] See next page for explanation of abbreviation and Route numbers.

313 Explanation of Abbreviations

A. S. E. Co—All Steel Equipment Co.
A., T. & S. F. Ry—Atchison, Topeka & Santa Fe Ry. Co.
C. & N. W. Ry Co—Chicago & North Western Ry. Co.
C., B. & Q. R. R. Co—Chicago, Burlington & Quincy R. R. Co.
C., R. I. & P. Ry—Chicago, Rock Island & Pacific Ry. Co.
E., J. & E—Elgin, Joliet and Eastern Ry. Co.
F. L. Co—Foster Lumber Co.
I. S. Co—Illinois Steel Co.
La. S. S. Co—La Salle Steel Co.
M. F. & C. Works—Morden Frog & Crossing Works.
N. T. Co—National Tube Co.
N. Y. C. R. R. Co—New York Central R. R. Co.
R. W. M. Co—Richards Wilcox Manufacturing Co.

Explanation of Route Numbers

1—E., J. & E. Belt Ry., C. & N. W. Ry. Co.
2—E. J. & E. via Griffith, Ind.
3—E., J. & E.
4—E., J. & E., N. Y. C. Ry. Co.
5—E., J. & E., Belt Ry., C., B. & Q. R. R. Co.
6—E., K. & E., Belt Ry., T. & S. F. Ry. Co.
7—E., J. & E., C., B. & Q. R. R. Co.
8—Norfolk & Western Ry. Co., Pennsylvania Railroad, E., J. & E.
9—Louisville & Nashville R. R. Co., Chicago, Indiana & Louisville Ry., E., J. & E.

314 47. The evidence establishes that in all their more important matters concerning the conduct of their business, finance, and their undertakings, dealings, and transactions with each other and with firms and corporations which are not subsidiaries of the Steel Corporation, the defendant and said other subsidiaries named above are governed, controlled, supervised, directed, and dominated by the Steel Corporation.

48. Defendant and said other subsidiaries do not in said important matters and transactions act freely and independently of the Steel Corporation in behalf of their respective individual interests, but, on the contrary, they act in cooperation and coordination with each other and the Steel Corporation and under, pursuant to, and in accordance with the latter's supervision, direction, control, and authority and subject to its approval.

49. The ownership of the capital stock of defendant and said other subsidiaries by the Steel Corporation is not used merely for the purpose of sharing in their profits and participating in their affairs in a manner normal and usual with stockholders, but said ownership is used and exercised by the Steel Corporation in such manner and to such extent as to make the defendant and said other subsidiaries mere departments, branches, adjuncts, and instrumentalities of the Steel Corporation.

The foregoing findings of fact are based upon the legal and competent evidence of record adduced upon the trial of this cause, rejecting all irrelevant, incompetent, and immaterial parts thereof.

Conclusions of Law

Upon the foregoing findings of fact the Court states the following as its conclusions of law:

1. That defendant and said mining, manufacturing, and producing subsidiaries of the Steel Corporation named above, though separately incorporate and distinct in legal form, are not in substance, fact, and good faith bona fide corporations separate and distinct from the Steel Corporation, but are in substance and in fact mere adjuncts, branches, departments, and instrumentalities thereof, and that,
315 therefore, defendant, at the time its transported said commodities so mined, manufactured, and produced by said other subsidiaries, had, and has with respect to all such commodities so produced and transported, an interest direct or indirect in said commodities within the meaning of said act of Congress.

2. That said commodities so mined, manufactured, and produced by said manufacturing and producing subsidiaries of the Steel Corporation, and so transported by defendant, are mined, manufactured, produced, and transported by and under the direction of one and the same authority, namely, the Steel Corporation.

3. That the transportation of said commodities by defendant under the circumstances set forth in the above findings of fact has

been, is, and will be unlawful and in violation of said act of Congress.

4. That defendant should be permanently restrained, enjoined, and prevented from engaging in said unlawful transportation.

Respectfully submitted.

DWIGHT H. GREEN,
United States Attorney.
HAROLD M. STEPHENS,
Assistant Attorney General.
ELMER B. COLLINS,
Special Assistant to the Attorney General.
BURT L. SMELKER,
Attorney, Interstate Commerce Commission.

JULY 31, 1934.

316 In United States District Court

[Title omitted.]

Objections of defendant to the findings of fact and the conclusions of law proposed by petitioner

Filed March 23, 1935

Defendant objects to the findings of fact presented by Petitioner as a whole and to each separate finding thereof, for the reason that such findings state what Petitioner claims is the evidence in the case and do not state the ultimate facts proved by the evidence in the case.

Defendant further objects to each of the findings proposed by Petitioner for the further reasons stated below.

In some cases the statement herein made of the facts are supported by reference to the answer. That the answer is proof in such case, see Page 74, Defendant's Brief.

I

Defendant objects to Paragraph 1 of Section I of Petitioner's proposed findings because it includes a finding that this suit was instituted "at the request of the Interstate Commerce Commission."

There was no evidence introduced in the case to support this finding. The matter was put in issue by the Defendant's answer. See Paragraph 1 of Defendant's Answer.

317 II

Defendant objects to Paragraph I of Section II of Petitioner's proposed findings for the reason that it is irrelevant, immaterial and unnecessarily lengthy and prolix.

Defendant objects to Paragraph 2 of Section II of Petitioner's proposed findings for two reasons. First, because it is inaccurate. The provision of the instrument referred to in the findings is not a limitation on the Lake Shore Company but expresses an obligation on that company to transport all of its traffic of a certain kind over the Chicago and Eastern Illinois tracks. The purpose of this was to insure to the Chicago and Eastern Illinois its compensation computed on a train-mile basis under the lease (Government's Exhibit Y, 7–9; Government's Exhibit C, 22, Rec. 71, 72).

The second reason objection is made is that it is irrelevant. It throws no light upon the question as to whether the Steel Corporation dominates or controls the Elgin, Joliet and Eastern Railway Company or commingles the affairs of the two companies or any other issue in this case.

If the matter should be deemed a proper matter for a finding of fact, it should be accurately stated. To do this, it would be necessary to include all of the provisions of Article 2, Section IV, and Article 3, Section IV of Government's Exhibit Y, the lease referred to.

Defendant objects to Paragraphs 3, 4, and 5 of Section II of Petitioner's findings of fact on the ground that the same are irrelevant and immaterial.

Defendant objects to Paragraph 6 of Section II of Petitioner's findings of fact on the ground that the same is irrelevant and immaterial. If it be deemed proper to incorporate this section in the findings of fact then Defendant specifically objects to the last sentence reading "Industrial tracks are tracks used exclusively for the service of an industry." While Mr. Campbell, on Record 276–7, used substantially this language, he used it in explaining Exhibit O which was an exhibit prepared by the Defendant for use in another proceeding and was describing what he understood to be the character of the tracks scheduled in a certain color on said exhibit.

318

Mr. Campbell was in the Engineering Department of the company, Mr. Bond, who was the Traffic Manager, on the contrary testified in regard to the furnishing of industrial tracks to industries along the line of the railroad. He stated that the Defendant constructed and maintained tracks on an industry whenever the industry so desired and in that case the Defendant has the exclusive use of the tracks for any purposes (Rec. 364, 372).

III

Manner of Election of Defendant's Board of Directors

2. Defendant objects to the proposed finding of Petitioner in Paragraph 2 of Section III for the following reasons:

There is no evidence that the Steel Corporation ever directed the election of any of the Directors of the Defendant.

There is no evidence that the Steel Corporation exercised any control or gave any direction of any kind whatever with reference to the election of Directors of subsidiaries other than the Defendant. This point was put in issue by the answer and no evidence on the subject introduced (Answer 2, 3).

3. Objection is made to Defendant's proposed finding in Paragraph 3 of Section III for the following reasons:

There is no evidence that the President of Defendant was appointed to that office by the Steel Corporation. He was an officer of the Defendant when the Steel Corporation first acquired the
319 stock of Defendant. The circumstances under which he was first elected President are not shown in the evidence (Rec. 54, 74, 75).

The President of the Defendant was never appointed Chairman of Defendant's Board of Directors. There was no such office.

The President of the Defendant was never "appointed" by the Steel Corporation to any office "with" proxy authority to the President of the Defendant to do anything. The facts in this regard have already been stated. The Steel Corporation, having full confidence in Mr. Banks, who held the office of President of the Defendant for many years, gave him a proxy to vote the stock which it owned at each annual election, and Mr. Banks exercised his own judgment on the matter (Rec. 74, 198, 199, 225).

The President of the Defendant did not and could not "appoint" any directors of Defendant. The only way any person could become a Director of Defendant was by election by the stockholders. Undoubtedly, Mr. Banks, the President of Defendant, holding proxy for the stock of the Steel Corporation, could and did elect whomsoever he thought best to elect as directors, but it is manifestly improper and unfair to state the matter as stated in the proposed finding of Petitioner.

4. Defendant objects to the proposed finding of fact of Petitioner in Paragraph 4 of Section III for the reason that the Petitioner in this case seeks to enjoin what is alleged to be a presently existing situation and, therefore, the personnel of Defendant's directors prior to 1920 would seem to be immaterial, although correctly stated in the proposed finding (Government's Exhibit R, Rec. 226, 229, 288, 289).

5. Defendant objects to Petitioner's finding 5 (a) of Section III for the following reasons:

It is unfair to state that the Defendant's Board of Directors functioned as follows, and then state its actions on two
319 or three subjects. As a matter of fact, the manner in which the directors acted was the ordinary and usual way in which directors act (Rec. 221, 226, 227, 228).

Defendant never had a Chairman of the Board of Directors. There is no evidence to the effect that meetings, other than the annual meeting, were infrequent.

It is incorrect to say that projects covered by the contracts of the company have generally been completed or performed before the contracts were approved by the directors. By reference to the list of contracts introduced in evidence, it would seem that many of the contracts were leases of land. In any event, the testimony was that when a contract was once executed by the President and Secretary, it was always carried out whether approved by the Board of Directors or not (Rec. 222).

The manner of handling contracts made by Elgin, Joliet and Eastern will be discussed under heading 8.

Sub-paragraph (c) of Paragraph 5 of Section III of Petitioner's proposed findings of fact is objected to for the reason that it is irrelevant and immaterial to the issues in this case. The evidence does not show that there was extended correspondence and conferences between the Defendant's President and the Steel Corporation. The Chairman of the Steel Corporation did not direct that the Board of Directors of the Defendant should approve the supplemental contract, but in the letter referred to dated October 25, 1922, he wrote, "I believe that the Directors of the Elgin, Joliet and Eastern Railway Company and Chicago, Lake Shore and Eastern Railway Company should, respectively, approve and ratify the arrangements made" (Government's Exhibit C, 39).

Sub-paragraph (d) of Paragraph 5 of Section III of Petitioner's proposed findings of fact is objected to for the following reasons:

320 It is incorrect in the statement of the evidence. It is irrelevant to any of the issues in this case.

When the Defendant received compensation from the Federal Government for the use of its road during Federal control the Comptroller of the Steel Corporation recommended that the moneys should be handled as like moneys have been handled by other companies mentioned by him, suggesting, subject to the approval of the Defendant's President, that from the moneys received from the railroad administration one-half be deposited in the Continental and Commercial Bank in a special account, and one-half in United States Liberty Loan Bonds which would be sold to Defendant by the Steel Corporation if this should be agreeable to the Defendant. The Steel Corporation's Comptroller wrote, "I think it will be all right to have your Directors approve the investment made by the officers in liberty loan bonds at their next meeting. I assume that meeting will be held within the course of a few months" (Government's Exhibit E, 17 to 21; Rec. 419–421). There was no direction of any kind.

Consolidated Income Tax Returns

Objection is made to Paragraph 6 of Section III of Petitioner's proposed findings of fact for the reason that the matters therein contained are irrelevant and have no bearing upon any issue in this

case, as set forth more fully at page 46 to Appendix, Defendant's Brief, . Defendant's consent to a consolidated income tax return does not tend to prove any such domination, control, or commingling of affairs as to justify a disregard of the corporate entities of the Steel Corporation and the Defendant.

Location of Offices

Defendant objects to Paragraph 7 of Section III of Petitioner's proposed findings of fact upon the ground that upon
321 any issue of domination and control or commingling of affairs it is wholly immaterial that the several subsidiary companies have offices in the same office buildings.

Defendant's general offices are located at 208 South LaSalle Street, Chicago, Illinois, in the same building as Illinois Steel Company and the other subsidiaries have their offices, but upon a separate floor (Rec. 485, 486). Defendant's annual reports list an office of Defendant at 71 Broadway, New York City, New York, which is also the address of the Steel Corporation, but there was no evidence that Defendant maintained any office force or transacted any business at that place (Rec. 294, 295, 302, 303, 421, 322).

Employment of Counsel

Defendant objects to Paragraph 8 of Section III of Petitioner's proposed findings of fact for the reason that even if it were correctly stated (which it is not) the employing of a firm of lawyers whose services are available to all subsidiaries and whose charges are apportioned among them is no evidence of an important commingling of their separate affairs. Majestic Company vs. Orpheum Company, Inc., 21 F. (2d) 720, 726, 727. Furthermore, the finding of fact is incorrect.

Mr. Knapp and his firm were not appointed by the Steel Corporation as attorneys for the Defendant; Mr. Knapp was Defendant's General Counsel before Mr. Banks became President in 1901 (Rec. 99) the year the Steel Corporation was formed. Since 1901 that firm has been General Counsel for the Defendant and Division Counsel for the other subsidiaries, but not for the Steel Corporation. For some time payments to Mr. Knapp's firm were made by Defendant through Illinois Steel Company because the firm
322 preferred to be paid in this manner, although it was contrary to the desires of the Steel Corporation's General Counsel, Mr. Lindabury (Government's Exhibit H, 5, 6). For the past ten or fifteen years Defendant has paid its General Counsel directly (Rec. 405, 406).

Meetings of Presidents of Subsidiaries

Defendant objects to Paragraph 9 of Section III of Petitioner's proposed finding of fact for the reason that it is incorrect, both in

the statement of facts and the inferences which it seeks to support. The proposed finding seeks by inference to establish the Defendant's operations were discussed generally. By the use of the term "discloses", the finding seeks to infer that Defendant revealed to the manufacturing subsidiaries facts with reference to its business and traffic which it handled for other shippers and which it was under a duty not to reveal. The Defendant's common carrier duties and functions were not discussed, directed or controlled at such meetings (Rec. 57–61, 460, 470). The proposed finding is irrelevant to any issue in this case.

For further reasons in support of Defendant's objections, see comments under the above heading in Appendix to Defendant's Brief.

Instructions and Directions to Subsidiaries

Defendant objects to Paragraph 10 of Section III of Petitioner's proposed finding of fact upon the ground that it was wholly irrelevant and immaterial. Requests made by the Steel Corporation for information concerning the affairs of the Elgin, Joliet and Eastern Railway Company do not destroy the separate entity of that company and requests that the information be furnished on certain pre-
323 scribed forms "to provide a uniform and orderly manner" in which the report should be made "to facilitate and obtain standardized and uniform methods as to the size and scope of forms of information to be supplied" as Mr. Filbert testified (Rec. 10, 141), are obviously just as futile.

Approval by Steel Corporation of all Important Undertakings of its Subsidiaries

Defendant objects to Paragraph 11 of Section III of Petitioner's proposed findings of fact for the reason that it does not state the facts correctly.

Mr. Filbert, Comptroller of the United States Steel Corporation, was asked by Petitioner's attorneys if it was the practice of the subsidiary companies in general to take up with the Steel Corporation leases and agreements between subsidiary companies. He replied, "Only in those transactions which involve major features of consequence to the stockholders" (Rec. 106). It will be noted that the question related only to leases and agreements between subsidiaries. He did not say that the Defendant even took up such matters. Nor did he say that all leases and agreements between subsidiaries were taken up with the Steel Corporation. There is no other evidence in the case showing what was actually done by other subsidiaries. What was actually done with reference to important undertakings of the Elgin, Joliet and Eastern Railway Company will be later referred to. Petitioner refers to a letter issued by the President of the Steel Corporation under date of May 1, 1903. It encloses a

copy of a resolution of the Finance Committee. It explained that, "What is desired is that immediately after you have entered into important contracts for machinery, construction, etc., under appropriations granted your company, you forward to me copies of such contracts and any other information pertaining thereto that
324 would be of interest to the committee in order that I may submit it to the committee and keep them fully advised from time to time of the action of the officials of subsidiary companies concerning important matters in connection with the expenditures of money in which they are deeply interested." The evidence shows that no contracts entered into by the Defendant were ever submitted to any official of the Steel Corporation before they were executed, although some of the terms of three or four contracts were discussed with officers of the Steel Corporation before execution (Rec. 475–480, 183–200, 155, 215).

For further discussion of the facts see Appendix to Brief, page 59.

Objection is further made to this finding that if the facts were correctly stated, such facts are irrelevant and immaterial in connection with any issue in this case. They do not indicate any dominance or control such as to reduce Defendant and the Steel Corporation to one and particularly they do not indicate any interference in the freedom of Defendant to carry on its common carrier business.

The Appropriation Requests

Defendant objects to Paragraphs 12 to 16, Section III of Petitioner's proposed findings of fact for the reason that they are inaccurate and not complete insofar as they purport to set forth facts in relation to the appropriation requests. They are all irrelevant to any issue in this case.

Paragraph 12 is inaccurate in stating that appropriation requests are made by Defendant for "any unusual maintenance expense" for there is no evidence to that effect, but the evidence is to the contrary (Rec. 217). The requests are not "in reality requests made to
325 the Steel Corporation by its subsidiaries for authority to spend their own money"; and the evidence shows that they all in reality requests made by departmental heads of Defendant to the Presidents of Defendant for authority to spend its own money (Rec. 108, 109, 181; compare the forms in Government's Exhibit T), and only a limited class of appropriation requests are submitted to the Finance Committee of the Steel Corporation and then only for the committee's recommendation. The finding further fails to show the relative unimportance of the expenditures covered by such appropriation requests comprising, as they did, only 3.5 percent of Defendant's total expenditures for maintenance and operation from 1926 to 1930 (Defendant's Exhibit 27). These matters are discussed more in detail at page 62, Appendix 10, Defendant's Brief.

Paragraph 13 ignores the testimony that Defendant never in fact purchased any land for which it made appropriation requests and that Defendant's sales of land were reported after and not before the sale was completed. The proposed finding is, therefore, irrelevant and immaterial. As in the case of appropriation requests for other purposes, there is no evidence that an "approval" of the Steel Corporation was necessary before a transaction involving real estate could be consummated (Rec. 229).

Paragraph 14 is entirely unsupported by any evidence. Government's Exhibit D, 10, 11, contains merely Mr. Filbert's suggestion that appropriation requests for the excess cost of steel ties and steel wheels and for betterments to equipment through adding appliances and appurtenances be submitted semiannually for the approximate amount for the ensuing six months (since the exact amount could not be forecast in advance) and any unexpended balance should be canceled at the end of the six months, but there is no evidence that this suggestion was ever followed. Nothing in this evidence or in pages 41 to 42 of the same exhibit supports a general finding as
326 proposed and no evidence indicates in what manner this matter could be deemed material and relevant.

Paragraph 15 is without support in the evidence. The correspondence relating to the well at Dyer, Indiana (Government's Exhibit D, 36–39), has nothing whatever to do with expenditures in excess of the amounts covered by appropriation requests. The finding is further incorrect in stating indirectly that the appropriation requests recommended by the Finance Committee are amounts appropriated by the Steel Corporation.

The proposed finding is irrelevant to any issue in this case.

Paragraph 16 is contrary to the weight of the evidence. One letter written more than twenty years ago calling "attention to necessity of complying rigidly with the instructions heretofore given" concerning the appropriation requests counts for little against the testimony of Mr. Banks, Mr. Rogers, and Mr. Filbert that Defendant and the other subsidiaries are "all the while" proceeding in disregard of these instructions (Rec. 117, 118, 119, 182, 183, 222, 484, 485, 92, 93, 218).

The finding is irrelevant to any issue in this case.

Budget Estimates

Defendant objects to paragraph 17 of Section III of Petitioner's proposed findings of fact. The practice of submitting "budget estimates" was shown to have been discontinued for several years, having "almost died aborning" (Rec. 122). At most, the budget estimates were merely a statement of prospective betterments and improvements in order that Steel Corporation officials might know in advance what sums of money might be necessary for capital expenditures in the future (Rec. 121). No finding on this issue could be material in the present inquiry.

327 Reports of Unexpended Balances

Defendant objects to Paragraph 18 of Section III of Petitioner's proposed finding of fact for the reason as stated above in objecting to the similar finding in Paragraph 14. The proposed finding is inaccurate in that neither Mr. Filbert's testimony nor Government's Exhibit D. 24, makes any reference to any regular quarterly reports of unexpended balances.

The finding is irrelevant to any issue in this case.

Reports of Capital Expenditures

Defendant objects to Paragraph 19 of Section III of Petitioner's proposed finding of fact for the reason that it is irrelevant and immaterial. The fact that Defendant reported to the Steel Corporation capital expenditures after they had been made, has no bearing on any issue in this case in the absence of any use of such reports in dominating Defendant or commingling its affairs.

Purchases

Defendant objects to Paragraphs 20 to 23 of Section III of Petitioner's proposed findings of fact for the following reasons:

Paragraph 20 is immaterial and irrelevant. The mere fact that for statistical purposes only (Rec. 251) reports of some purchases, but not all purchases (Rec. 261, 262, 272), are made after the purchases are completed, has no bearing upon any issue in this case. The evidence is positive that the Chairman of the Purchasing Agent's Committee has no supervision or control over Defendant's purchases (Rec. 249–251, 262), and Defendant's purchasing agent is not even a member of the committee (Rec. 248).

328 Paragraph 21 is immaterial and irrelevant. While Defendant does purchase from the other subsidiaries materials produced by them, it does so not because of any direction or requirement of the Steel Corporation but in the discretion of Defendant's purchasing agent and because the materials (which are standard priced) can thus be obtained right on the line of Defendant's railroad (Answer 10; Rec. 262, 271, 389). Defendant purchases its frogs and switches from Pettibone Mulliken Company, located in Chicago, not a subsidiary of the Steel Corporation instead of from Lorain Steel Company, a producer of frogs and switches and a subsidiary of the Steel Corporation, located at Johnston, Pennsylvania (Rec. 272).

Paragraph 22 is incorrect in stating that officials of the Steel Corporation directed Defendant to buy its coal from subsidiary mining companies. The correspondence referred to in support of the proposed finding (Government's Exhibit J, 5–8) shows no such direction; on the contrary it shows that Defendant purchased its coal in the manner so as best to serve Defendant's own interest—from in-

dependent mines along its lines when desirable to keep them in operation, or from United States Fuel Company, a subsidiary from which Defendant was able to purchase at a lower price, calculated on a delivered basis, coal of a uniformly high-grade, in solid train loads of coal cars especially designed to fit Defendant's coaling stations (Rec. 263–271, 411–416; Defendant's Exhibits 3, 4, 28, 29, 30).

Government's Exhibit N, referred to by Petitioner as authority for its statement that Defendant purchases coal at prices fixed in Inter-Company Price List, shows that it does not apply to Defendant (Exhibit N, Section B(5)).

Paragraph 23 is irrelevant and immaterial. The information is requested to be given after the transaction has been completed. Clearly this is for information purposes only.

Clearance Account

329 Defendant objects to Paragraph 24 of Section III of Petitioner's proposed findings of fact for the reason that it is irrelevant and immaterial upon any issue in this case. That the so-called "Clearance Account" is a mere bookkeeping method by which is provided a convenient and less expensive means of settling accounts among subsidiaries similar to the clearing houses through which banks clear their mutual transactions (Rec. 123). Defendants verified answer alleges (and it, therefore, states as proved) that Defendant's use of the clearance account was and is voluntary (Answer, 7); the testimony is that in so far as Defendant is concerned the account is correctly maintained in accordance with the rules and regulations prescribed by the Interstate Commerce Commission (Rec. 379, 380) and does not result in any commingling of the separate accounts of the respective subsidiaries (Rec. 122, 123, 382).

The proposed finding is further inaccurate in stating that the account was set up by the Steel Corporation because the evidence shows that it was adopted by a conference of the accounting officers of subsidiaries (Rec. 123) and in stating that the account is maintained in the offices of the Steel Corporation in New York when, of course, so far as the account concerns Defendant, the account is also maintained upon Defendant's books in Chicago (Rec. 382).

Advance Account

Defendant objects to Paragraphs 25 to 27 of Section III of Petitioner's proposed findings of fact for the reason that the fact that the Defendant deposited some of its surplus funds with the Steel Corporation in order to secure a higher rate of interest has no bearing upon any issue in this case and the proposed findings are, therefore, irrelevant and immaterial. The proposed findings are also incorrect in the following instances:

330 Paragraph 25 is incorrect in stating that the account was established by the Steel Corporation. Mr. Filbert testified that he did not know by whom the account was originated (Rec. 168, 169); and Government's Exhibit E. 4, 5, merely shows that the name "advance account" was there chosen to designate an already existing account similar to what is now known as the advance account. There was no testimony as to the manner in which the other subsidiaries deposited funds in the advance account if they ever did see the objection to this evidence sustained at Rec. 237) and while the proposed finding correctly states the method by which Defendant made its deposits, there is nothing in the evidence from which it can be said that these deposits were pursuant to any "purpose and plan of this account." The proposed finding is directly contrary to the evidence that such deposits were in fact and in practice a demand account subject to withdrawal without notice (Rec. 166, 167-169, 239-340, 256).

Paragraph 26 indicates that there is something compulsory about these deposits, whereas the verified answer alleges and the testimony is that Defendant make deposits in the advance account only in the exercise of its own discretion (Answer, 6; Rec. 237, 244, 246-247). The amount of withdrawals made by Defendant since 1929 is immaterial except in so far as it demonstrates the wisdom of Defendant's selection of a depositary for its surplus funds.

Paragraph 27 seeks to distort the evidence by stating that Defendant made deposits totaling $32,000,000.00 "upon specific direction of the Steel Corporation", and admitting that Defendant made deposits totaling $47,000,000.00 "without such specific direction." The evidence actually is that in thirty-four instances Defendant made deposits in the advance account totaling $32,000,000.00 at the Steel Corporation's request not at its direction, and that in ninety-nine instances Defendant requested permission to make deposits which totaled $47,000,000.00. This proposed finding is irrelevant and immaterial.

331 Banks and Bank Accounts

Defendant objects to Paragraph 28 of Section III of Petitioner's proposed findings of fact for the following reasons:

(a) It is immaterial that before opening a new bank account the subsidiaries sought the advice of the Steel Corporation on the soundness of the proposed bank based "on what is presumably, its broader perspective of the general banking situation" (Rec. 126, 127) in view of the undisputed testimony that the Steel Corporation "never designated a bank with which they (the subsidiaries) should do business, or a depositary in which they should deposit their funds" (Rec. 41, 42).

(b) Sub-paragraph (b) is incorrect and is objected to for the reason set forth in objecting to the same subject matter in sub-par-

agraph (d) in Paragraph 5 of Section III of Petitioner's findings of fact.

Defendant objects to Paragraph 29 of Petitioner's proposed findings of fact for the reason that it is directly contrary to the testimony that the Steel Corporation exercise no supervision over the bank balances maintained by the subsidiaries (Rec. 128). The correspondence referred to in support of the proposed finding (Government's Exhibit E, 14–21) relates to special accounts (one account for the amount of money subject to "recapture" under Section 15 (a) of the Interstate Commerce Act, and the others the special accounts maintained by Defendant to compensate banks at stations along its lines for the cashing of pay roll checks) and even in these letters there is only advice and not any supervision or direction.

Defendant objects to Paragraph 30 of Section III of Petitioner's proposed findings of fact for the reason, so many times stated in these objections, that the mere fact that reports are
332 made to the Steel Corporation has no bearing upon any issue in this case.

Inter-Company Price-List

Defendant objects to Paragraph 31 of Section III of Petitioner's proposed findings of fact for the reason that any finding as to the inter-company price-list is immaterial in view of the evidence that it does not apply to any commodity which is purchased by Defendant from any other subsidiary (Rec. 389; Government's Exhibit N, Section B (5)). This subject is covered in detail *in* at page 70, Appendix to Defendant's brief, 12; Inter-Company Price-List and Purchases.

The Stock Purchase Plan

Defendant objects to Paragraph 32 of Section III of Petitioner's proposed findings of fact for the reason that it is wholly irrelevant and immaterial in this case. The facts are stated correctly in the proposed finding, but the fact that a subsidiary's employees are given the right to purchase stock of the parent company from that parent company has no bearing upon the disregard of the separate corporate entities of the parent and subsidiary.

The Pension Plan

Defendant objects to Paragraph 33 of Section III of Petitioner's proposed findings of fact for the reason that it is immaterial and irrelevant in this case that Defendant voluntarily and solely in the exercise of its own discretion permits those employees who have been selected by Defendant's President and who comply with rules of the Pension Fund to receive pensions from United States Steel and Carnegie Pension Fund, a Pennsylvania corporation, not a subsidiary of the Steel Corporation (Answer, 8; Rec. 133–134, 142).

Defendant contributed nothing to the trust fund which is ad-
333 ministered by that corporation and not by the Steel Corporation as seems to be suggested by Petitioner (Rec. 133, 142), but Defendant's employees secure the benefit of part of the income from the trust fund, Defendant contributing the additional amount necessary for the payment of pensions to its employees. The manner in which pension payments are carried in Defendant's books of account was fixed by the rules and regulations of the Interstate Commerce Commission and not by the Steel Corporation (Rec. 135). Any finding upon this subject matter has no relevancy whatever to any issue in this case.

Defendant pays into the Pension Fund the entire amount paid to its employees, except a portion thereof which is allocated to Defendant out of the earnings of investments held by the Pension Fund. Defendant contributed nothing to the principal of the fund, and Defendant's payments into the fund are always less than the actual payments to Defendant's retired employees. Defendant's participation in said pension plan was and is voluntary and in the sound discretion of Defendant's Board of Directors (Rec. 133–135, 142; Answer, 8).

The Bonus Plan

Defendant objects to Paragraph 34 of Section III of Petitioner's proposed findings of fact for the reason that it is irrelevant and immaterial. A stockholder should be consulted with and fully advised concerning any bonuses paid to the officers and employees of a corporation and the participation by the Steel Corporation and its stockholders' committee and the determination of bonuses paid to Defendant's officers and employees is a proper stockholders' activity.

Extent of Control over Manufacturing Subsidiaries

De..ndant objects to Paragraph 35 of Section III of Peti-
334 tioner's proposed findings of fact for the reason that it is irrelevant and immaterial. The issue before the court in this case is the nature and extent of the supervision and control, if any, exercised by the Steel Corporation over Defendant and what may be the supervision or control exercised by the Steel Corporation over its manufacturing subsidiaries in order to coordinate their manufacturing activities has no bearing upon this issue.

In Defendant's proposed findings of fact Defendant sets forth statements of fact amply supported by the evidence showing that neither the Steel Corporation nor its manufacturing subsidiaries exercise any supervision or control over the Defendant's common-carrier business.

Powers of the Steel Corporation's President

Defendant objects to Paragraph 36 of Section III of Petitioner's proposed findings of fact for the reason that it is immaterial and irrelevant. Whatever may be the duties or powers of the President of the Steel Corporation under its by-laws with reference to its business, those by-laws do not grant him any powers nor require of him the performance of any duties with reference to the Defendant's business. Furthermore, the undisputed evidence is that neither the President nor any other officer of the Steel Corporation or any of its other subsidiaries ever did exercise any supervision or control over the transportation service performed by Defendant or its common-carrier business.

Defendant objects to Paragraph 37 of Section III of Petitioner's proposed findings of fact for the reason that it is irrelevant and immaterial to any issue in this case.

335 Terms of Trackage Agreement Between Chicago and Eastern Illinois Railroad Company and Chicago, Lake Shore and Eastern Railway Company

Defendant objects to the whole and to each part of Paragraph 38 of Section III of Petitioner's proposed findings of fact for the reason that neither the execution of the trackage agreement between the Chicago and Eastern Illinois Railroad Company and the Chicago, Lake Shore and Eastern Railway Company, nor the making of any amendments to such an agreement, nor any of the terms of said agreement or of said amendments is relevant to or has any bearing on the question whether the Defendant has or is transporting commodities produced by it or in which it has an interest, etc. Further, none of the facts alleged in such proposed finding are allegations of fact in issue in this case.

Defendant further objects to sub-paragraph (b) of said Paragraph 38 for the reason that there is no evidence in the record to sustain the allegations therein made.

Defendant further objects to the allegations in sub-paragraph (d) of said Paragraph 38 for the reason that the greater part of the allegations in said sub-paragraph are not sustained by the evidence in the record and for the reason that the allegations in said sub-paragraph are stated unfairly and so as to give a wrong impression of the facts referred to. The testimony of the witness referred to in said sub-paragraph (d) will show the correctness of these objections.

Defendant further objects to sub-paragraph (f) of said Paragraph 38 for the reasons that the evidence in the record does not sustain the allegations in said sub-paragraph.

Furthermore, the instrument referred to in said sub-paragraph (f) not only does not sustain the allegations in the paragraph but

the instrument is a mere memorandum found in the files of
336 the Defendant bearing no signature, without any evidence to show by whom it was made or under what circumstances and without any evidence as to the source of the figures or statistics referred to.

Defendant further objects to sub-paragraph (g) of said Paragraph 38 for the reason that the allegations therein are not only irrelevant to any issue in this case but they are so stated as to give a wrong impression. The proposed finding omits to show that the information contained in the letter referred to was furnished at the request of Mr. Shearson to whom the letter was addressed (Government's Exhibit C, 31, 32). What Mr. Shearson wanted the information for was not disclosed to the writer of the letter (Rec. 85). The fact that subsidiaries of the Steel Corporation furnished a large amount of traffic over the Chicago and Eastern Illinois was not urged as a reason which the trackage contract with the Chicago, Lake Shore and Eastern should not be cancelled (Rec. 86, 202, 203).

The Defendant further objects to sub-paragraph (h) of said Paragraph 38 for the reason that the allegations therein contained are not only irrelevant to any issue in this case, but for the greater part are not sustained by the evidence in this case. For instance, the proposed finding says that Judge Gary directed the President of Defendant to purchase an option for trackage rights over the Chicago Terre Haute and South Eastern. The evidence is that Mr. Banks first suggested the plan (Rec. 82).

Lease from Chicago, Lake Shore and Eastern Railway Company to Elgin, Joliet and Eastern Railway Company

Defendant objects to the whole and to each part of Paragraph 39 of Section III of Petitioner's proposed findings of fact for the reason that neither the execution of the lease from the Chicago,
337 Lake Shore and Eastern Railway Company to the Elgin, Joliet and Eastern Railway Company, nor the making of any amendments to such lease, nor any of the terms of said lease or of said amendments is relevant to or has any bearing on the question of whether the Defendant has or is transporting commodities produced by it or in which it has an interest, etc.

Defendant further objects to the whole and each part of said Paragraph 39 because the allegations therein contained are not allegations of fact which are in issue in this proceeding.

Sub-paragraph (a) and (b) setting out the alleged correspondence concerning the reasons for making the lease are particularly irrelevant to any issue in this case.

The correspondence referred to in said sub-paragraphs (a) and (d) instead of showing that the making of said lease and amendments was dominated and controlled by the Steel Corporation, showed that Judge Gary, the principal executive officer of the Steel

Corporation, was very reluctant to see such lease made (Also, Government's Exhibit B, 2, 12).

All of the correspondence referred to in sub-paragraphs (c), (d), and (e), in said Paragraph 39, consists of letters of the President of the Defendant explaining why he thought experiences under the lease had shown that it was not working fairly to both parties and why and how it should be amended so as to be fair to both parties. There is nothing in such correspondence to show that the corporate entity of Defendant was impaired.

Furthermore, said Paragraph 39 is not correct, particularly in its statement of the terms of said lease and the amendments as shown in sub-paragraphs 5 and 6 of said Paragraph 39, and sub-paragraph (d) of said Paragraph 39.

Defendant objects to Paragraph 40 of Section III of Petitioner's proposed findings of fact for the reason that it is contrary to the evidence in the case.

338 Defendant objects to Paragraph 41 of Section III of Petitioner's proposed findings of fact for the reason that it is immaterial and irrelevant to any issue in this case. The effort of the parties to the lease referred to was to make it fair to both parties.

Defendant objects to Paragraph 42 of Section III of Petitioner's proposed findings of fact for the reason that it is immaterial and irrelevant to any of the issues in this case. The rates and charges made by the Lake Shore Company for services rendered to the Illinois Steel Company, both for switching service and for transporting products from the plants of the Illinois Steel Company to connections with other railroads, were fair and legal, and there was no evidence in the case to the contrary.

Defendant objects to Paragraph 43 of Section III of Petitioner's proposed findings of fact for the reason that it is immaterial and irrelevant to any issues of the case, and that the relationship existing between the Illinois Steel Company and the Lake Shore Company therein referred to was proper and legal, and there was no evidence in the case to the contrary.

Defendant objects to Paragraph 44 of Section III of Petitioner's proposed findings of fact for the reason that it is immaterial and irrelevant to any issues of the case, and for the further reason that the President of the Lake Shore Company and the Defendant, together with the officers of the Illinois Steel Company and of the Steel Corporation, used their best endeavors to make the terms of the lease referred to fair to each party, and there is no evidence to the contrary in the case.

Defendant objects to Paragraph 45 of Section III of Petitioner's proposed findings of fact for the reason that it is immaterial and irrelevant to any of the issues in this case, and that it is contrary to the evidence in this case.

339 Transportation Services Furnished by Defendant to Other Subsidiaries of the Steel Corporation and Articles and Commodities Transported by Defendant

Defendant objects to Paragraph 46 of Section III of Petitioner's proposed findings of fact, including sub-paragraphs (a), (b), (c), (1), (2), (3), (4), and the paragraph following the paragraph indicated as (4), for the reason that the evidence does not sustain the claim that the Defendant owned or had any interest, direct or indirect, in the articles referred to or that any of such articles were manufactured, mined, or produced by or under the authority of Defendant, and for the further reason that such proposed finding is unnecessarily extensive and prolix and filled with unnecessary details.

Defendant objects to Paragraph 47 of Section III of Petitioner's proposed findings of fact for the reason that it is immaterial and irrelevant to any issues in this case, and for the further reason that it is contrary to the evidence in this case.

Defendant objects to Paragraph 48 of Section III of Petitioner's proposed findings of fact for the reason that it is immaterial and irrelevant to any issue in this case, and for the further reason that it is contrary to the evidence in this case.

Defendant objects to Paragraph 49 of Section III of Petitioner's proposed findings of fact for the reason that it is contrary to the evidence in this case.

Conclusions of Law

Defendant objects to the conclusions proposed by Petitioner and denominated Conclusions of Law and numbered 1, 2, 3, and 4, because Sections numbered 1 and 2 are statements of erroneous conclusions of fact and not statements of law, and because said Sections
340 1, 2, 3, and 4 are not correct interpretations of the so-called Commodities Clause of the Interstate Commerce Act nor a proper legal application of such Commerce Clause to the facts of this case, said Commerce Clause being the only provisions of the law which Defendant is charged with violating.

Respectfully submitted.

NATHAN L. MILLER,
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Solicitors for Defendant.

FRANK B. KELLOGG,
CHARLES S. BELSTERLING,
KNAPP, BEYS, ALLEN & CUSHING,
Of Counsel.

341 In United States District Court

[Title omitted.]

Findings of fact and conclusions of law requested by Elgin, Joliet, and Eastern Railway Company, defendant

July 1, 1935

1. The defendant has not transported in Interstate Commerce any article or commodity (other than timber and the manufactured products) which actually, as a matter of fact, was manufactured, mined, or produced by it or under its authority or which actually, as a matter of fact, was owned in whole or in part by it or in which it actually, as a matter of fact, had an interest direct or indirect except such articles or commodities as were necessary and intended for its use in the conduct of its business as a common carrier.

2. The primary business of defendant is that of a common carrier. Its other acts and transactions were incidental to its primary business of transportation. The United States Steel Corporation never took any part in transporting any commodities over the railroad of the defendant or in operating or in managing the operation of defendant's railroad or of any of the facilities of such operations or gave any directions or exercised any control over the transportation conducted over the railroad of defendant or took any part in any of the transactions between the defendant and the shippers over its railroad.

342 3. The existence and free functioning of defendant as a common carrier railroad corporation and a separate corporate entity was not destroyed or obstructed or interfered with by the United States Steel Corporation, neither was the public recognition of defendant as a common carrier railroad company concealed, obscured, or given any particular character to distinguish it from other common carrier railroads by anything done by the United States Steel Corporation.

4. All communications and conferences between representatives of the United States Steel Corporation and representatives of defendant whether properly characterized as orders, requests, advice, or the exercise of control, and whether originating with the United States Steel Corporation or with defendant, related solely to the internal affairs of the defendant and to the relations between United States Steel Corporation and defendant, and did not relate to the transaction by defendant of its transportation business or the relation between the defendant and those for which it performed transportation business.

5. Defendant regularly filed and published tariff rates covering the transportation services performed by it in accordance with the provisions of the law. In the conduct of its transportation business

defendant did not discriminate against or in favor of any of its patrons either in service or in charges, but treated all alike and in accordance with its filed and published tariffs.

6. The defendant did not contribute any property or labor or exercise any authority in, or take any part in manufacturing, mining,
or producing any of the commodities transported by it or own,
343 in whole or in part, or acquire any interest direct or indirect
in any of the commodities transported by it (other than timber and the manufactured products thereof and such articles and commodities as were necessary and intended for its use in the conduct of its business as a common carrier).

7. All transactions and communications between United States Steel Corporation and defendant were carried on in the form of transactions and communications between two separate and distinct corporations and in such transactions and communications neither the two corporations nor their affairs were merged or mixed.

8. Defendant conducted all of its affairs in its own name for itself and in the manner and form of a corporation.

9. The United States Steel Corporation did not conduct for defendant any of its business affairs between defendant and any other persons or corporation, but defendant conducted all of its business affairs through and by its own officers and employees and not through, or by anyone acting as an officer or employee of the United States Steel Corporation.

10. Neither the President, Secretary, Treasurer, Manager, or Superintendent of defendant nor any of its executive or managing operatives is an officer of or employee of the United States Steel Corporation.

11. Whenever any information concerning the affairs of defendant or any other action by defendant was desired by United States Steel Corporation, the United States Steel Corporation never obtained such information or took such action directly by its own officers or agents, but always made request for such information or action
through the officers of defendant, in the way which is
344 customary and usual between corporations which are separate
and distinct corporations.

12. Neither the money, accounts, or properties of defendant were commingled with the moneys, accounts, or properties of United Steel Corporation, but the moneys, accounts, and properties of each company were kept separate and distinct from the moneys, accounts, and properties of the other and the identity and integrity of the moneys, accounts, and properties of each company were preserved without any mixture, commingling, or confusion.

345 **Conclusions of Law**

1. On the facts stated in the foregoing findings of fact the Elgin, Joliet and Eastern Railway Company as a matter of law is not guilty of violating section 1 (8) Interstate Commerce Act 34 Stat.

499

584, U. S. C., Title 49, Section 1 (8) herein referred to as the Commodities Clause of the Interstate Commerce Act.

2. The mere ownership of all of the stock of an industrial corporation by a railroad company, or of the stock of a railroad company by an industrial corporation, or of the stock of both a railroad corporation and an industrial corporation by a holding corporation does not create a violation of said Commodities Clause of said Interstate Commerce Act even when such railroad corporation transports in interstate commerce commodities produced or owned by such industrial corporation.

3. The transportation in interstate commerce by a railroad corporation whose stock is owned by an industrial corporation, of commodities produced or owned by such industrial corporation, is not a violation of said Commodities Clause of said Interstate Commerce Act, but is sanctioned by, and subject to regulation under Section 15 (13) of said Interstate Commerce Act.

CHARLES E. WOODWARD,
Judge.

JULY 1, 1935.

346 In United States District Court

[Title omitted.]

Order denying petitioner's requested findings and conclusions and approving defendant's requested findings and conclusions

July 1, 1935

It is Ordered by the Court that the Findings of Fact and Conclusions of Law requested by the Plaintiff be, and the same is hereby, denied, and the Findings of Fact and Conclusions of Law requested by the Defendant is approved and signed by the Court and ordered by the Court to be filed by the Clerk of this Court.

It is Further Ordered that the Bill of Complaint be, and the same is hereby, dismissed for want of equity, to all of which the Plaintiff by its attorney duly excepts.

347 In United States District Court Northern District of Illinois, Eastern Division

No. 10152

UNITED STATES OF AMERICA

v.

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

Opinion

Filed July 2, 1935

WOODWARD, District Judge: This suit was brought in the name of the United States against the Elgin, Joliet and Eastern Railway Company to enjoin and restrain it from transporting in interstate commerce any article or commodity (with exceptions not material to this case) manufactured, mined or produced by or under the authority of certain subsidiaries of the United States Steel Corporation (hereinafter referred to as the Steel Corporation) in which such subsidiaries own or have an interest.

The suit is based on Section 1 (8) of the Interstate Commerce Act (34 Stat. 584; 49 U. S. C. A. 1 (8)), commonly known as the Commodities Clause, which reads as follows:

"It shall be unlawful for any railroad company to transport from any State, Territory, or the District of Columbia, to any other State, Territory, or the District of Columbia, or to any foreign country, any article or commodity, other than timber and the manufactured products thereof, manufactured, mined or produced by it, or under its authority, or which it may own in whole or in part, or in which it may have any interest, direct or indirect, except such articles or commodities as may be necessary and intended for its use in the conduct of its business as a common carrier."

Defendant is a corporation railroad Company, organized under the laws of the State of Illinois and Indiana, and maintains its principal office at Chicago, Illinois. It is a common carrier engaged in the transportation of property (but not passengers) in interstate commerce and is subject to all the provisions of the Interstate

348 Commerce Act. It operates a line of railroad extending from Waukegan, Illinois, to Joliet, Illinois, thence easterly to Porter, Indiana, forming what is known as the "Chicago Outer Belt Line." It also operates a line extending from Griffith, Indiana, to South Chicago, Illinois, which serves the cities of Gary, Buffington, Indiana Harbor, Whiting and Hammond, Indiana. It also operates branch lines which extend from Normantown, Illinois, to Aurora, Illinois. It also operates its engines, trains, and cars over such of the lines of the Chicago, Lake Shore and Eastern Railway Company

as extend from Chicago Heights, Illinois, to Rossville Junction, Illinois, a distance of 80 miles and, in addition thereto, over such of the lines of the Chicago and Eastern Illinois Railroad Company as extend from Rossville Junction to Jackson, Indiana, a distance of 53.10 miles, from Danville, Illinois, to Sidell Junction, Illinois, a distance of 22.20 miles and from Sidell Junction to Rossville Junction, a distance of 34.40 miles. Its present authorized capital stock is $10,000,000.

The Steel Corporation was organized February 25, 1901, under the laws of the State of New Jersey. In 1901 the Steel Corporation acquired and now owns all the capital stock of the defendant. The Steel Corporation owns, directly or indirectly, all the capital stock of its several manufacturing, mining, and producing subsidiaries, the total amount and the ownership of the issued and outstanding capital stock of each being as follows:

Subsidiaries		Capital stock issued	Amount owned by Steel Corporation
Elgin, Joliet and Eastern Railway Company	(C.)	$10,000,000	$10,000,000
Chicago, Lake Shore and Eastern Railway Company	(C.)	9,000,000	(1)
Illinois Steel Company	(C.)	18,650,600	18,650,600
American Bridge Company	(C.)	10,000,000	10,000,000
American Sheet & Tin Plate Company	(C.)	24,500,000	24,500,000
	(P.)	24,500,000	24,500,000
American Steel & Wire Company	(C.)	50,000,000	50,000,000
	(P.)	40,000,000	40,000,000
Federal Steel Company	(C.)	46,484,300	46,484,300
	(P.)	53,260,900	53,260,900
National Tube Company	(C.)	45,000,000	45,000,000
	(P.)	40,000,000	40,000,000
Universal Atlas Cement Company	(C.)	3,500,000	[2] 2,500,000
United States Fuel Company	(C.)	3,600,000	[3]
United States Coal & Coke Company	(C.)	12,500,000	10,500,000

[1] $9,000,000 owned by Illinois Steel Company.
[2] Balance of $1,000,000 owned by Illinois Steel Company.
[3] $3,600,000 owned by Federal Steel Company.
[4] Balance of $2,000,000 owned by Illinois Steel Company.

348 The Steel Corporation is not a manufacturing or producing company, but is a holding company.

The railroad of defendant connects various plants of the subsidiaries of the Steel Corporation with each other. Its function in that regard is to interchange the products of such subsidiaries with each other. Its railroad also connects the plants of these subsidiaries with all the great railroad systems entering the City of Chicago. Its function in that regard is to transport the products of these subsidiaries to and into the streams of commerce so that they may reach every part of the country. The defendant transports, and has transported, in interstate commerce, a vast tonnage of articles and commodities manufactured, mined, produced, or owned by the Steel Corporation's subsidiaries. In addition, it carries on a large transportation business with shippers who are in no way connected with or related to the Steel Corporation or its subsidiaries.

Further facts will be stated in the opinion.

Under the Commodities Clause transportation is made unlawful only when two things concur: (1) the transportation must be by a railroad company; and (2) the commodities transported must be produced by or under the authority of the railroad company transporting them, or such railroad company so transporting them must own or have an interest in the commodities transported. U. S. v. Delaware & Hudson Co., 213 U. S. 366, 408.

The defendant does not transport articles or commodities which it produces, mines, or manufactures. The defendant is a regularly incorporated railroad company. The articles or commodities which it is alleged are transported illegally are produced or manufactured by other incorporation companies. The bond of connection is that the stock of the railroad company and the stock of the producing and manufacturing company are owned by a single corporation, namely, the Steel Corporation.

350 The question presented is, therefore, a narrow one. It is contended that the defendant comes within the prohibition of the statute because the Steel Corporation has exercised such management, domination, control, direction, and coordination over the defendant and the producing and manufacturing subsidiaries of the Steel Corporation as to establish in the defendant an "interest, direct or indirect" in the articles or commodities transported. In other words it is contended that the Steel Corporation has exercised such dominion and control over both the defendant and the producing and manufacturing subsidiaries as to destroy the separate corporate entities and to reduce all corporations to one.

The Supreme Court has interpreted and applied the Commodities Clause in several decisions. These decisions are relied upon by both parties in this case and are as follows: U. S. v. Delaware & Hudson Co., 213 U. S. 366 (1909); U. S. v. Lehigh Valley R. R. Co., 220 U. S. 257 (1911); U. S. v. Delaware Lackawanna & Western R. R. Co., 238 U. S. 516 (1915); U. S. v. Reading Co., 253 U. S. 26 (1920). Both parties maintain that the Supreme Court, in the above cited cases, and particularly in the Lehigh and Reading cases, has laid down the rules for testing the situation disclosed by the record in this case.

The constitutional validity of the Commodities Clause was asserted in the Hudson case. In the Hudson case several cases were considered together. In some of the cases it appeared that the railroad company owned the stock of a mining company, the coal of which it transported. After holding that the Commodities Clause was constitutional, the court proceeded to its construction and interpretation. In holding that a railroad company does not violate the Commodities Clause by transporting coal mined by a corporation in which the railroad company owns the stock, the court, in construing the clause, use this language:

"We then construe the statute as prohibiting a railroad company engaged in interstate commerce from transporting in such commerce

articles or commodities under the following circumstances and conditions: (a) When the article or commodity has been manufactured, mined, or produced by a carrier or under its authority, and, at the time of transportation, the carrier has not, in good faith, dissociated itself from such article or commodity; (b) When the carrier
351 owns the article or commodity to be transported, in whole or in part; (c) When the carrier, at the time of transportation, has an interest, direct or indirect, in a legal or equitable sense, in the article or commodity, not including, therefore, articles or commodities manufactured, mined, produced, or owned, etc., by a bona fide corporation in which the railroad company is a stockholder."

It may, therefore, be considered as settled by the decision in the Hudson case, that the ownership by a railroad company of the stock of a producing or manufacturing company whose articles or commodities the railroad company transports would not, of itself, and without more, subject the railroad company to the penalties of the Commodities Clause. In such case, the railroad company would not have an interest, direct or indirect, legal or equitable, in the articles or commodities transported.

All the cases involved in the Hudson decision were reversd and remanded with direction for such further proceedings as may be necessary to apply and enforce the statute. Among the cases reversed and remanded was U. S. v. Lehigh Valley R. R. Co. After the case was remanded the government presented an amended bill and asked leave to file it, which leave was refused and the bill dismissed. The case then went again by appeal to the Supreme Court (U. S. v. Lehigh Valley R. R. Co., 220 U. S. 257). On appeal the court held that the proposed amended bill was germane to the original bill. As to the case presented by the amended bill the court say:

"The amendment contained copious averments in regard to the actual relations existing between the railroad company and one of the coal companies mentioned in the original bill, viz, the Lehigh Valley Coal Company. In substance, it was averred that as to this particular coal company, the railroad company was not only the owner of all the stock issued by the coal company, but that the railroad company so used the power thus resulting from its stock ownership as to deprive the coal company of all real, independent existence, and to make it virtually an agency or dependency or department of the railroad company. In other words, in great detail facts were averred which tended to establish that there was no distinction in practice between the coal company and the railroad company, the latter using the coal company as a mere device to enable the railroad company to violate the provisions of the Commodities Clause. It was expressly charged that in consequence of these facts—

"'The coal company is not a bona fide mining company, but is merely an adjunct or instrumentality of the defendant. The defend-

ant is in legal effect the owner of and has a pecuniary interest in the coal mined by the coal company, and which is transported by the defendant.'"

352 The amended bill contained other averments tending to show domination and control of the coal company by the railroad company.

The court reaffirmed its holding in the Hudson case. While the court reaffirmed its holding in the Hudson case, yet there was "nothing in that conclusion foreclosed the right of the Government to question the power of a railroad company to transport in interstate commerce a commodity manufactured, mined, owned, or produced by a corporation in which the railroad held stock and where the power of the railroad company as a stockholder was used to obliterate all distinctions between the two corporations. That is to say, where the power was exerted in such manner as to so commingle the affairs of both as by necessary effect to make such affairs practically indistinguishable and therefore to cause both corporations to be one for all purposes."

The court also held that:

"The use of such stock ownership in substance for the purpose of destroying the entity of a producing, etc., corporation and of commingling its affairs in administration with the affairs of the railroad company, so as to make the two corporations virtually one, brings the railroad company voluntarily acting as to such producing, etc., corporation within the prohibitions of the commodities clause. In other words, that by operation and effect of the commodities clause there is a duty cast upon a railroad company proposing to carry in interstate commerce the product of a producing, etc., corporation in which it has a stock interest not to abuse such power so as virtually to do by indirection that which the commodities clause prohibits, a duty which plainly would be violated by the unnecessary commingling of the affairs of the producing company with its own, so as to cause them to be one and inseparable."

The court also use this language:

"The right of a railroad company as a stockholder to use its stock ownership for the purpose of a bona fide separate administration of the affairs of the corporation in which it has a stock interest may not be denied."

The principle announced in the Lehigh case, reaffirmed in the Reading case, heretofore referred to, and controlling in this case, is that if a railroad company owns all the stock of a producing or manufacturing company and then so controls the producing or manufacturing company as to obliterate the producing or manufacturing company of all really independent existence and making it a mere agent or department of the railroad, then the railroad company does have an interest within the Commodities Clause in the article or commodity produced or manufactured by the producing or manu-

facturing company. If the railroad company, by reason of its
353 stock ownership in a producing or manufacturing company,
so uses that control as "to make the two corporations virtually one," that is to say, "so as to cause them to be one and inseparable," then the railroad company is brought within the Commodities Clause, otherwise not.

In the Lackawanna case the court held that under the facts averred in the bill the coal company, the stock of which was owned by the railroad company, was a mere agent or instrumentality of the railroad company. Again the court affirmed the principle that the union, in one unit, of stock of a railroad company and of stock of a producing or manufacturing company, whose products the railroad company transports, does not bring the case within the commodities Clause, the court using the following language:

"But mere stock ownership by a Railroad, or by its stockholders, in a producing company cannot be used as a test by which to determine the legality of the transportation of such Company's coal by the interstate carrier. For, when the Commodity Clause was under discussion, attention was called to the fact that there were a number of the anthracite roads which at the time owned stock in coal companies. An amendment was then offered which, if adopted, would have made it unlawful for any such Road to transport coal belonging to such company. The amendment, however, was voted down; and, in the light of that indication of Congressional intent, the Commodity Clause was construed to mean that it was not necessarily unlawful for a railroad company to transport coal belonging to a Corporation in which the Road held stock. United States v. Delaware & Hudson Co., 213 U. S. 414. For a stronger reason, it would not necessarily be illegal for the Road to transport coal belonging to a Corporation whose stock was held by those who owned the stock of the Railroad Company."

The case principally relied upon by the government is the Reading case. That case was brought to dissolve the intercorporate relations existing between the corporation defendants for the reason that through such relations trade was restrained, the Anti-trust Act and the Commodities Clause violated. The Reading Company was a holding company. It owned all the stock of a railroad company as well as all the stock of a coal company. The railroad company transported the coal produced and mined by the coal company. The holding company, the railroad company, and the coal company had the same officers, directors, and managers, and all three companies were operated as one concern. The court used this language:
354 "All three of the Reading companies had the same officers and directors, and it was under their authority that the mines were worked and the railroad operated, and they exercised that authority in the one case in precisely the same character as in the other—as officials of the Holding Company. The manner in which the stock of the three was held resulted, and was intended to result,

in the abdication of all independent corporate action by both the Railway Company and the Coal Company, involving as it did the surrender to the Holding Company of the entire conduct of their affairs. It would be to subordinate reality to legal form to hold that the coal mined by the Coal Company, under direction of the Holding Company's officials, was not produced by the same 'authority' that operated the Reading Railway lines."

The Reading Railroad, prior to its reorganization in 1896, in an effort to monopolize the anthracite coal trade in the anthracite region of Pennsylvania, had bought up many anthracite coal mines. Upon reorganization the Holding Company stripped the railroad of property that it was necessary for it to have in order to perform its common carrier service. It took over title to all of its terminals, equipment, engines, cars, and ships. The holding company was thus enabled to control the common carrier service and disabled the railroad from performing such service without its aid. The court characterized the situation as follows:

"By the plan or reorganization adopted it was disabled from performing its functions as a carrier, except with the aid of the Holding Company, for all of the equipment, engines, cars, and ships owned by the former Railroad Company, and its tidewater terminals at Philadelphia and on New York Harbor were allotted to the Holding Company."

The properties of the holding company, the railroad company, and the coal company were combined for a single bond issue. The earnings "were to be distributed, not in proportion to the shares of their capital stocks, aggregating $28,000,000, but were to go to the creditors and shareholders of the Holding Company, with its mortgage debt of $135,000,000 and its capital stock of $140,000,000. The Holding Company thus served to pool the property, the activities, and the profits of the three companies."

In view of the facts before the court in the Reading case it was held that both the railroad company and the coal company abdicated all independent corporate action and surrendered to the Holding Company the entire conduct of their affairs. The court looked through the form to the substance and found that the domination and control of the holding company over the railroad company and over the coal company was complete. The court say that the

355 "Holding Company had continued in active, dominating control of the Reading Company and of the competing Central Railroad system, and also of the two coal companies, thus effectually suppressing all competition between the four companies and pooling their earnings."

The court further found that the plan of a holding company holding the stock of the railroad company and the stock of the coal company was adopted "for the purpose of evading the Constitution of Pennsylvania and the provisions of the Federal Anti-Trust Act."

The language of the opinion must be construed as relating to the facts then before the court and is as follows:

"In terms the act declares that it shall be unlawful for any railroad company to transport in interstate commerce 'any article or commodity' * * * mined, or produced by it, or under its authority, or which it may own in whole, or in part, or in which it may have any interest, direct or indirect.

"Accepting the risk of obscuring the obvious by discussing it, and without splitting hairs as to where the naked legal title to the coal would be when in transit, we may be sure that it was mined and produced under the same 'authority' that transported it over the railroad. All three of the Reading companies had the same officers and directors, and it was under their authority that the mines were worked and the railroad operated, and they exercised that authority in the one case in precisely the same character as in the other—as officials of the Holding Company. The manner in which the stock of the three was held resulted, and was intended to result, in the abdication of all independent corporate action by both the Railway Company and the Coal Company, involving as it did the surrender to the Holding Company of the entire conduct of their affairs. It would be to subordinate reality to legal form to hold that the coal mined by the Coal Company, under direction of the Holding Company's officials, was not produced by the same 'authority' that operated the Reading Railway lines. The case falls clearly within the scope of the act, and for the violation of this commodity clause, as well as for its violation of the Anti-Trust Act, the combination between the Reading Railway Company and the Reading Coal Company must be dissolved."

The railroad company, in the Reading case, did not meet the condemnation of the court simply for the reason that its stock and the stock of the coal company was held by the holding company. It was not the ownership of the stock by the holding company, but the manner of the use of that stock for purposes of domination and control, that was the determining factor. The mere intervention of a holding company did not bring the railroad within the condemnation of the statute. The whole scheme, in the Reading case,
356 was designed and used for the purpose of monopoly and for evading, in form, the Commodities Clause. In the Reading case, the distinction between all corporate entities was obliterated. For all practical purposes, the three companies were one and inseparable. The coal was in fact transported by the same "authority" that mined and marketed it. The court, therefore, summarize the law upon this subject in the following language:

"It results that it may confidently be stated that the law upon this subject now is, that while the ownership by the railroad company of shares of the capital stock of a mining company does not necessarily create an identity of corporate interest between the two such as to render it unlawful under the commodities clause for the railroad company to transport in interstate commerce the products of such mining company, yet where such ownership of stock is resorted

to, not for the purpose of participating in the affairs of the corporation in which it is held in a manner normal and usual with stockholders, but for the purpose of making it a mere agent, or instrumentality or department of another company, the courts will look through the forms to the realities of the relation between the companies as if the corporate agency did not exist and will deal with them as the justice of the case may require. United States v. Lehigh Valley R. R. Co., 220 U. S. 257, 272, 273; United States v. Delaware, Lackawanna & Western R. R. Co., 238 U. S. 516, 529; Chicago, Milwaukee & St. Paul Ry. Co. v. Minneapolis Civic & Commerce Association, 247 U. S. 490, 501."

The cases construing and interpreting the Commodities Clause are in perfect harmony. Irrespective of form, if the facts in a given case show that a railroad company occupies the inconsistent position of carrier and shipper, then the railroad company is violating the Commodities Clause.

The question is one of fact. Do the facts in the instant case show that the defendant occupies such inconsistent position?

The facts, as disclosed by this record, may be summarized as follows:

(1) The defendant has not transported in Inter-state Commerce any article or commodity (other than timber and the manufactured products) which actually, as a matter of fact, was manufactured, mined, or produced by it or under its authority or which actually, as a matter of fact, was owned in whole or in part by it or in which it actually, as a matter of fact, had an interest, direct or indirect, except such articles or commodities as were necessary and intended for its use in the conduct of its business as a common carrier.

2. The primary business of defendant is that of a common carrier. Its other acts and transactions were incidental to its primary
357 business of transportation. The United States Steel Corporation never took any part in transporting any commodities over the railroad of the defendant or in operating or in managing the operation of defendant's railroad or of any of the facilities of such operations or gave any directions or exercised any control over the transportation conducted over the railroad of defendant or took any part in any of the transactions between the defendant and the shippers over its railroad.

3. The existence and free functioning of defendant as a common carrier railroad corporation and a separate corporate entity was not destroyed or obstructed or interfered with by the United States Steel Corporation, neither was the public recognition of defendant as a common carrier railroad company concealed, obscured or given any particular character to distinguish it from other common carrier railroads by anything done by the United States Steel Corporation.

4. All communications and conferences between representatives of the United States Steel Corporation and representatives of defendant whether properly characterized as orders, requests, advice or the exercise of control, and whether originating with the United States

Steel Corporation or with defendant, related solely to the internal affairs of the defendant and to the relations between United States Steel Corporation and defendant, and did not relate to the transaction by defendant of its transportation business or the relation between the defendant and those for which it performed transportation business.

5. Defendant regularly filed and published tariff rates covering the transportation services performed by it in accordance with the provisions of the law. In the conduct of its transportation business defendant did not discriminate against or in favor of any of its patrons either in service or in charges, but treated all alike and in accordance with its filed and published tariffs.

6. The defendant did not contribute any property or labor or exercise any authority in, or take any part in manufacturing, mining or producing any of the commodities transported by it or own, in whole or in part, or acquire any interest, direct or indirect, in any of the commodities transported by it (other than timber and the manufactured products thereof and such articles and commodities as were necessary and intended for its use in the conduct of its business as a common carrier).

338

7. All transactions and communications between United States Steel Corporation and defendant were carried on in the form of transactions and communications between two separate and distinct corporations and in such transactions and communications neither the two corporations nor their affairs were merged or mixed.

8. Defendant conducted all of its affairs in its own name for itself and in the manenr and form of a corporation.

9. The United States Steel Corporation did not conduct for defendant any of its business affairs between defendant and any other persons or corporation, but defendant conducted all of its business affairs through and by its own officers and employees and not through, or by anyone acting as an officer or employee of the United States Steel Corporation.

10. Neither the President, Secretary, Treasurer, Manager or Superintendent or defendant nor any of its executive or managing operatives is an officer of or employee of the United States Steel Corporation.

11. Whenever any information concerning the affairs of defendant or any other action by defendant was desired by United States Steel Corporation, the United States Steel Corporation never obtained such information or took such action directly by its own officers or agents, but always made request for such information or action through the officers of defendant, in the way which is customary and usual between corporations which are separate and distinct corporations.

12. Neither the money, accounts or properties of defendant were commingled with the moneys, accounts, or properties of United

States Steel Corporation, but the moneys, accounts, and properties of each company were kept separate and distinct from the moneys, accounts, and properties of the other and the identity and
358 integrity of the moneys, accounts, and properties of each company were preserved without any mixture, commingling or confusion.

The government presents twenty-one facts or incidents which it argues indicate complete domination and control. It contends that the acquisition of the stock of the defendant and of the other subsidiaries mentioned in the bill was for the purpose of avoiding, among others, the Commodities Clause. That the ownership of such stock did not destroy the corporate entity is settled by the decisions heretofore discussed in this opinion. At the time the stock was acquired and for many years prior thereto, the defendant operated a belt line railroad extending around Chicago. It connected many of the plants of the Steel Corporation subsidiaries, the Illinois Steel Company at South Chicago, Gary and Joliet, the American Bridge Company, American Sheet and Tin Plate Company and National Tube Company at Gary, American Steel and Wire Company at Joliet and Waukegan. Not only does it connect these plants with each other, but it connects them with all the trunk line railroads entering the City of Chicago. The acquisition of the stock of defendant grew out of an important business need. It served a legitimate economic purpose. The record is devoid of any evidence from which an inference could be drawn that the stock was acquired with the intent and purpose to avoid either the Anti-Trust laws or the Commodities Clause.

It is also contended that the manner of electing directors and declaring dividends show domination and control. Mr. Banks was President of defendant. For many years last past it has been customary, each year, for the Steel Corporation to issue its proxy to Mr. Banks. He exercised this proxy at annual meetings of the stockholders and annually boards of directors were elected in this manner. Not since 1920 have any officers of the Steel Corporation served as directors of defendant.

There were conferences between the defendant and the Steel Corporation relative to dividends and to disposition of other funds belonging to the defendant. But all these matters were matters pertaining to the internal affairs of the defendant. There can be no impropriety in a corporation consulting and advising with its
360 stockholders as to dividends and as to other funds in which the stockholders have an interest. It must be noted that there was at no time any commingling of funds or properties.

For a number of years a consolidated income tax return has been filed for the Steel Corporation, the defendant and other subsidiaries of the Steel Corporation. The filing of a consolidated income tax return did not destroy the separate corporate entities, but, on the contrary, maintained and preserved their integrity. Commissioner

v. Van Camp Packing Co., 67 Fed. (2) 596; Texas Pipe Line Co. v. U. S., 58 Fed. (2) 852; Swift & Co. v. U. S., 38 Fed. (2) 365; Woolford Realty Co. v. Rose, 286 U. S. 319, 328.

Defendant's general offices are located in the same building in Chicago, although on different floors. The employees in the office of the defendant company are not the employees of the other subsidiaries.

Mr. Knapp has been general counsel for the defendant since, and before, the organization of the Steel Corporation and is Division Counsel for certain subsidiaries, but not counsel for the Steel Corporation. For the past ten years defendant has paid its counsel directly. The employment of counsel was a matter of contract and convenience. No inference detrimental to the defendant can be drawn from the fact that its general counsel is also division counsel of other subsidiaries.

There was voluminous evidence pertaining to the relationship subsisting between the Steel Corporation and its subsidiaries. The Steel Corporation had many subsidiaries. It was not an operating company. It kept in close and intimate contact with its subsidiaries. It had periodical meetings of the presidents. It secured through reports from defendant and other subsidiaries and otherwise, information as to markets, the financial condition, the contracts and expenditures, budget estimates, and other matters pertaining to the subsidiary companies. Most of the evidence pertaining to the relationship between the Steel companies and its subsidiaries, related to matters concerning the internal affairs of the corporation. In most, if not all, of these relationships there was a scrupulous recognition of the separate entities. The most that can be said, when the evidence is analyzed and studied, is that the Steel Corporation
361 as a stockholder has asked to be kept informed about the affairs of the defendant, has asked for an opportunity to tender advice and suggestions as to the conduct of internal affairs and has maintained a lively interest in all that pertains to the defendant and the allied corporations.

But no single piece of evidence taken alone, nor all taken together and considered as a whole warrant the inference that the defendant and the producing and manufacturing subsidiaries are under the domination, control, direction, and management of the Steel Corporation, in the sense that the defendant and the other subsidiaries are mere departments, branches, adjuncts, and instrumentalities of the Steel Corporation. The evidence fails to show that the defendant has any interest, direct or indirect, legal or equitable, in the articles or commodities which it transports for the subsidiaries of the Steel Corporation.

An order may be entered dismissing the bill for want of equity.

362 In United States District Court

Northern District of Illinois, Eastern Division

In Equity No. 10152

UNITED STATES OF AMERICA, APPELLANT

v.

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY, APPELLEE

Final Decree

Aug. 28, 1935

This cause came on to be heard upon final hearing for a permanent injunction upon the pleadings and evidence and was argued by counsel, and thereupon and on consideration thereof it is

Ordered, Adjudged, and Decreed: That the petition be, and it is hereby dismissed for want of equity.

Dated this 28th day of August 1935.

CHARLES E. WOODWARD,
United States District Judge.

363 In United States District Court

[Title omitted.]

Petition for Appeal

Filed Aug. 28, 1935

United States of America, petitioner in the above-styled cause, feeling itself aggrieved by the order of dismissal entered July 1, 1935, and the final decree entered August 28, 1935, by the District Court in this cause, prays an appeal from said order and decree to the Supreme Court of the United States.

The particulars wherein United States of America considers said order and decree erroneous are set forth in the assignment of errors accompanying this petition, to which reference is hereby made.

United States of America prays that a transcript of the record, proceedings, and papers on which said order and decree were made and entered, duly authenticated, be transmitted forthwith to the Supreme Court of the United States.

Dated August , 1935.

MICHAEL L. IGOE,
United States Attorney.
JOHN DICKINSON,
Assistant Attorney General.

364 CARL MCFARLAND,
ELMER B. COLLINS,
Special Assistants to the Attorney General,
BERT L. SMELKER,
Attorney, Interstate Commerce Commission,
Counsel for Appellant.

365 In United States District Court

[Title omitted.]

Assignment of errors

Filed Aug. 28, 1935

United States of America, petitioner in the above-styled cause, now comes and files the following assignment of errors in connection with its petition for an appeal from the order of dismissal entered July 1, 1935, and the final decree entered by this Court on August 28th, 1935, in said cause:

The District Court erred:

1. In entering the order and decree dismissing the petition for want of equity.

2. In holding that the evidence of record fails to establish that defendant has such interest in the commodities transported by it for the producing and manufacturing subsidiaries of the United States Steel Corporation as to make the transportation unlawful under Section 1 (8) of the Interstate Commerce Act.

3. In holding that all the evidence is insufficient to "warrant the inference that the defendant and the producing and manufacturing subsidiaries are under the domination, control, direction, and management of the Steel Corporation, in the sense that defendant
366 and the other subsidiaries are mere departments, branches, adjuncts, and instrumentalities of the Steel Corporation."

4. In holding that "the evidence fails to show that the defendant has any interest, direct or indirect, legal or equitable, in the articles or commodities which it transports for the subsidiaries of the Steel Corporation."

5. In failing to hold and find from the evidence that defendant has such interest in the articles and commodities which it transports

for the manufacturing and producing subsidiaries of the Steel Corporation as to make the transportation unlawful under Section 1 (8) of the Interstate Commerce Act.

6. In rejecting the findings of fact and conclusions of law requested by United States of America, petitioner, and in accepting and adopting the findings of fact and conclusions of law requested by defendant.

7. In excluding from consideration and thereby failing to give any weight or legal effect whatever to the most important and decisive basic and fundamental facts of record concerning the relationship, business methods, and community of interest between the United States Steel Corporation, the defendant, and the manufacturing and producing subsidiaries of the Steel Corporation.

8. In failing to interpret properly and to give proper evidential weight and legal effect to such of the basic and elementary facts as were considered and recited in the opinion.

9. In admitting in evidence, and in giving weight and consideration to testimony concerning the irrelevant administrative question whether defendant discriminated "against or in favor of its patrons either in service or in charges, but treated all alike and in accordance with its filed and published tariffs", and whether defend-
367 ant complied with other provisions of the Interstate Commerce Act.

10. In failing and refusing to issue the injunction as prayed in the petition.

Wherefore petitioner, United States of America, prays that the order of dismissal entered July 1, 1935, and the final decree entered August 28th, 1935, in this cause dismissing the petition for want of equity be in all respects reversed and set aside, with directions that the permanent injunction prayed for by United States of America be granted, and for such other further relief as may be necessary and appropriate in the premises.

MICHAEL L. IGOE,
United States Attorney.

JOHN DICKINSON,
Assistant Attorney General.

CARL MCFARLAND,
ELMER B. COLLINS,
Special Assistants to the Attorney General.

BURT L. SMELKER,
Attorney, Interstate Commerce Commission,
Counsel for Appellant.

AUGUST , 1935.

368 In United States District Court

[Title omitted.]

Order allowing appeal

Aug. 28, 1935

In the above-entitled cause, United States of America, petitioner, having made and filed its petition praying an appeal to the Supreme Court of the United States from the order of dismissal entered July 1, 1935, and the final decree of this Court entered in said cause August 28th, 1935, and having also made and filed an assignment of errors and a statement of jurisdiction, and having in all respects conformed to the statutes and rules of Court in such case made and provided, it is

Ordered and Decreed: That the appeal be, and it is hereby allowed as prayed.

Dated August 28th, 1935.

CHARLES E. WOODWARD,
United States District Judge.

369 In United States District Court

[Title omitted.]

Order extending time

Aug. 28, 1935

On motion of counsel for United States of America, appellant, it is hereby ordered that the time within which to file the record and docket this cause in the Supreme Court of the United States be, and the same is hereby extended sixty (60) days from October 7, 1935.

This August 28th, 1935.

CHARLES E. WOODWARD,
United States District Judge.

370 In United States District Court

[Title omitted.]

Order extending time for filing record

Dec. 5, 1935

On motion of counsel for United States of America, Appellant, and good cause therefore having been shown, it is ordered that the

time for filing the record and docketing this cause in the Supreme Court of the United States be, and the same is hereby extended to and including December 31, 1935.

This December 5, 1935.

CHARLES E. WOODWARD,
United States District Judge.

Consented to, K. K. Knapp.

371 In United States District Court

[Title omitted.]

Praecipe for transcript of record

Filed Dec. 20, 1935

To the Honorable Henry W. Freeman, Clerk of said Court:

Please prepare a transcript of the record in the above case, on appeal to the Supreme Court of the United States containing the following:

1. Amended petition.
2. Answer.
3. Narrative statement of oral evidence (181 typewritten pages).
4. All exhibits in original physical form.
5. Stipulation re record, and order thereon.
6. Findings of fact and conclusions of law requested by petitioner.
7. Defendant's objections to findings requested by petitioner.
8. Findings of fact and conclusions of law requested by defendant.
9. Order entered July 1, 1935, rejecting petitioner's requested findings and adopting findings requested by defendant, etc.
10. Opinion of the Court rendered July 1, 1935.
11. Final decree entered August 28, 1935.

372 12. Notice of appeal (with acknowledgment of service.)

13. Petition for appeal.
14. Assignment of error.
15. Order allowing appeal.
16. Statement of jurisdiction.
17. Citation on appeal with acknowledgment of service.
18. Order extending time, entered August 28, 1935.
19. Order extending time to December 31, 1935.
20. This Praecipe for transcript of record and service thereof.
21. Docket entries in appropriate order.
22. Clerk's certificate.

M. L. IGOE,
United States Attorney,
ELMER B. COLLINS,
Special Assistant to the Attorney General,
BURT L. SMELKER,
Attorney, Interstate Commerce Commission,
Counsel for Appellant.

Service of the foregoing praecipe for transcript of record and the receipt of a copy thereof are hereby acknowledged this 19th day of December 1935.

KEMPER K. KNAPP,
Counsel for Elgin, Joliet and Eastern Railway Company, Appellee.

373 In the United States District Court for the Northern District of Illinois, Eastern Division

Docket entries

10152 Docket. Bill for Injunction

UNITED STATES OF AMERICA

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

vs.

For Plaintiff: M. L. Igoe, U. S. Attorney; William D. Mitchell, Attorney General.
For Defendants: Nathan L. Miller, Kemper K. Knapp.

Nov. 13/30 Filed Bill and copy. 5.00 U. S.
" " " Issued Process and copy.
" 18 " Filed Process returned served fees 2.06.
Dec. 3 " " Answer & copy. 5.00 Dec. 31, 1930. 5.00.
Feb. 27-31 Filed Notice.
" " " " Motion of U. S. to strike certain portions of Deft's answer.
" " " Motion Dist. Atty. hearing on motion for leave to strike certain portions of Defts. answer set for May 7th, 1931-10 A. M. Woodward, J.
4-30-31 Hearing on Pltfs. mo. to strike Deft's. ans. reset for hrg to June 24-1931-Woodward, J.
6-18-31 Mo. of Dist. Atty. hrg. on Petnr's mo. to strike Defts. ans. now set for June 24-1931 is cont'd. to June 30-1931- 10 A. M. for hrg. Woodward, J.
6-30-31 Argmnts hrd. and concl'd. Deft. to file Brief by Aug. 1-1931- Pltf. to file Reply Brief by Aug. 15-1931- & Petnrs. Mo. to strike Deft's ans. taken under advisement- Woodward, J.
8-25-31 Filed Stip.
" " " Order on Stip. time for filing brief by U. S. A. extd. to Sept. 15-1931-& reply by Deft. to Oct. 15,-1931- Draft Lindley, J.
2-26-32 Filed notice.
" " " " Motion of U. S.
" " " Leave to file amended petn. instr. & rule on Deft. to file motion to dismiss within 30 days & file ans. within 60 days- Draft- Woodward, J.
" " " Filed amended Petn.
4-26-32 Filed ans. of Elgin, Joliet & Eastern Ry. Co. to amd. Petn. of U. S.
9-26-32 Cont'd to Oct. 10th to set for trial, Wilkerson, J.
10-10-32 Mo. to set for trial cont'd. Wilkerson, J.

374 10152

9-29-33 By agmnt. of Counsel cause set for trial Jan. 8-1934-10 A. M. Woodward, J.
12-30-33 Filed Petn. Pltf. for Subpoena Duces Tecum.
" " " Order on Clerk to issue Subpoena Duces Tecum of Geo. A. Leets etc. Draft, Barnes, J.
" " " Issued Subpoena Duces Tecum of Geo. A. Leets.
" " " Filed Petn. Pltf. for issuance of Wit. Subpoenas.
" " " Order on Clerk to issue Subpoenas to Wm. J. Filbert, J. B. Carse, G. L. Edwards—etc.—Draft—Barnes, J.
" " " Issued Subpoenas to Wm. J. Filbert et al.
1-6-34 Filed subpoena returned served as to J. B. Carse, Wm. J. Filbert & G. L. Edwards.
1-6-34 Filed subpoena Duces Tecum returned served as to Geo. K. Leet.
1-8-34 Trial cont'd to Jan. 15-1934 on mo. pltf. Woodward, J.
1-12-34 Filed Praecipe & issued 5 subpoenas.
" " " Filed Petn. U. S. for Subpoena Duces Tecum.
1-12-34 Order issue Subpoena Duces Tecum returnable Jan. 15-1934 to S. M. Rogers Draft Woodward, J.
" " " Issued Subpoena Duces Tecum & copy.
1-15-34 Evidence heard for Pltf. & trial cont'd. to Jan. 16-1934—Woodward J.
1-16-34 Further evidence heard for Pltf. & cont'd to Jan. 17-1934—Woodward, J.
1-17-34 Filed with card of F. G. Campbell—Fees 5.20.
" " " " " " " E. Beecraft—Fees 4.80.
" " " " " " " J. B. Carse—Fees 98.30.
" " " Hearing cont'd. to Jan. 18 1934-10 A. M. Woodward, J.
1-18-34 Filed Wit. subpoena ret'd. served. Fees 2.56.
" " " Filed wit. card of G. L. Edwards—Fees 98.30.
" " " Hearing cont'd. to Jan. 19-34-10 A. M. Woodward, J.
1-19-34 Hearing cont'd. to Jan. 22-1934 10 A. M. Woodward, J.
1-22-34 Evidence heard for deft. & Hrg. cont'd. to Jan. 23-1934 Woodward, J.
1-23-34 Filed Subpoena Duces Tecum ret'd. not found.
" " " Argmnts. heard & Cont. to Jan. 24 1934 for further argmnt Woodward, J.
1-24-34 Filed wit. card of G. E. Chesman Fees 9.20.
" " " Filed wit. card of S. M. Rogers Fees 9.20.
" " " Final argmnts. heard & taken under advsmnt. Briefs to be submitted Woodward, J.
" " " Filed wit. card of Wm. J. Filbert Fees 98.40.
" " " Filed wit. card of C. H. Kenzel Fees 9.20.
" " " Filed wit. card of A. F. Banks—Fees 242.80.
" " " Filed Pltf's Exhibits A to X, incls., X^1, X^2, X^3 & Y.
8-2-34 Filed Findings of Fact & Conclusions of law requested by U. S.
8-24-34 Filed 2 copies of brief of United States.
" " " " mimeographed copy of government's request for findings of fact and conclusions of law (letter-copy-of Elmer B. Collins, Spec. Asst. to Atty. General, attached).

7-1-35 By the Court findings of fact & conclusions of law requested by Pltf. denied—Findings of fact & Conclsns. of law requested by Deft. approved signed & filed—Ordered that bill be dismissed for want of Equity—To all of which plaintiff excepts—Woodward-J.

375 10152

7-2-35 Filed Opinion by Judge Woodward.
8-28-35 Ordered that Petition be dismissed for want of Equity—Draft. 5.00. Appeal allowed as prayed—Draft Time within which to file record and docket cause in Supreme Court of U. S. extended 60 days from Oct. 7-1935 Draft Woodward.
" " " Filed notice of Appeal.
" " " " Petn. for Appeal to Supreme Court. 5.00 U. S.
" " " " Assignment of Errors.
" " " " Statement of Jurisdiction.
" " " " Citation.
12-5-35 Time to file record & docket case in Supreme Court of U. S. extd. to & incldg. Dec. 31-1935-Woodward, J.
4-23-35 Filed objns. of Deft. to fdgs. of fact & conclsns. of law proposed by Petnr.
" " " Filed Deft's Exhibits Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40 & 41.
12-20-35 Filed Narrative Statement of Evidence.
" " " Filed Praecipe for Transcript of Record.
" " " Filed Stipulation re Record.

376 [Clerk's certificate to foregoing transcript omitted in printing.]

377 [Citation in usual form showing service on K. K. Knapp, filed Aug. 28, 1935, omitted in printing.]

379 In Supreme Court of the United States

Statement of points relied upon by appellant and designation of parts of record to be printed

(Filed Dec. 27, 1935)

I

United States of America, appellant, will rely upon the following points in brief and oral agreement before this Court on its appeal in the above entitled cause:

1. Under the facts established by the evidence, transportation by appellee of commodities produced and at the time of transportation owned by other subsidiaries of the United States Steel Corpora-

tion violates the Commodities Clause, section 1(8), Interstate Commerce Act.

2. The Commodities Clause disregards legal entities, and makes transportation unlawful where, as here, a holding company owns the stock of both the railroad company and the company which produces and owns the commodity transported.

3. The admitted fact that the Steel Corporation owns all the stock of appellee and of the producing companies compels the conclusion that the commodities produced and owned by the producing subsidiaries of the Steel Corporation and transported by appellee are produced and transported by the same authority, and that the transportation is in violation of the Commodities Clause.

4. The evidence establishes that the affairs of appellee and the producing subsidiaries are so controlled and dominated by the Steel Corporation as to destroy their independence and make
380 them, in fact and substance, its mere agents, departments, and instrumentalities.

5. The District Court erred in holding that the evidence of record fails to establish that appellee has such interest in the commodities produced and at the time of transportation owned by the producing subsidiaries of the Steel Corporation and transported by appellee as to make the transportation unlawful under the Commodities Clause.

6. The District Court erred in rejecting the findings of fact and conclusions of law requested by appellant and in adopting those requested by appellee.

II

Appellant further states that the entire record in this cause as filed in this Court is necessary for the consideration of the foregoing points, and that the entire transcript of record as transmitted by the Clerk of the District Court should be printed by the Clerk of this Court excepting the exhibits specified in "Stipulation Re Printing Record" filed in this Court.

STANLEY REED,
Solicitor General.
JOHN DICKINSON,
Assistant Attorney General.
ELMER B. COLLINS,
Special Assistant to the Attorney General.
BURT L. SMELKER,
Attorney, Interstate Commerce Commission.

Receipt of the above statement of points and designation of record is hereby acknowledged this 5th day of December 1935.

KEMPER K. KNAPP,
Counsel for Elgin, Joliet and Eastern Railway Company, Appellee.

Stipulation re printing record

It is hereby stipulated by counsel for the appellant and counsel for the appellee that:

1. The following exhibits contained in the transcript of record transmitted to this Court by the Clerk of the District Court shall not be printed by the Clerk of this Court:

Government Exhibit O and Defendant's Exhibits 1, 15, 23, 24, 25, 26, 31, 32, 33, 37, 38, 39, 40, and 41.

2. That the exhibits specified above shall be retained in original physical form as part of the record in this Court and may be referred to by the Court and by counsel for appellant and appellee in their briefs and upon oral argument in this cause.

3. Except as above specified, all of the transcript of record transmitted by the Clerk of the District Court to the Clerk of this Court shall be printed.

STANLEY REED,
Solicitor General,
ELMER B. COLLINS,
Special Assistant to the Attorney General,
BURT L. SMELKER,
Attorney, Interstate Commerce Commission,
Counsel for Appellant.
NATHAN L. MILLER,
KEMPER K. KNAPP,
Counsel for Elgin, Joliet and Eastern Railroad Company,
Appellee.

[File endorsement omitted.]

(Endorsement on cover:)
File No. 40,214. N. Illinois, D. C. U. S. Term No. 660. The United States of America, appellant, vs. Elgin, Joliet and Eastern Railway Company. Filed December 27, 1935. Term No. 660 O. T. 1935.

U. S. GOVERNMENT PRINTING OFFICE: 1936

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CHARLES ELMORE CROPLEY
CLERK

FILE COPY

No. 660

In the Supreme Court of the United States

OCTOBER TERM, 1935

THE UNITED STATES OF AMERICA, APPELLANT

v.

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

STATEMENT AS TO JURISDICTION

In the Supreme Court of the United States

OCTOBER TERM, 1935

No. 660

THE UNITED STATES OF AMERICA, APPELLANT

v.

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY, appellee

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

STATEMENT OF JURISDICTION

In compliance with Rule 12 of this Court, the United States of America, appellant, submits herewith its statement showing the basis of the jurisdiction of this Court in the above-entitled cause:

A

STATUTES

The statutory jurisdiction of this Court to review by direct appeal the decree here complained

of is conferred by the Act of February 11, 1903, c. 544, Sec. 2, 32 Stat. 823, known as the Expediting Act (U. S. C., Title 49, Secs. 44 and 45), and by Section 238 of the Judicial Code as amended by the Act of February 13, 1925.

B

DATES OF DECREE AND APPLICATION FOR APPEAL

The order of dismissal was entered July 1, 1935 (R. —), and the final decree sought to be reviewed was entered August 28th, 1935 (R. —). Appeal was allowed August 28th, 1935 (R. —).

Extension of time was granted for docketing the case with the Clerk of this Court until Dec. 31, 1935 (R. —).

The case was docketed in this Court Dec 27, 1935.

C

NATURE OF THE CASE

This cause was instituted by petition brought by the United States of America, appellant herein, for an injunction to restrain and prevent the appellee, a common carrier by railroad, from transporting in interstate commerce articles and commodities in violation of Section 1, par. 8, of the Interstate Commerce Act, 34 Stat. 584 (U. S. C., Title 49, Sec. 1 (8)), the provision of which makes it unlaw-

ful for any railroad to transport in interstate commerce any article or commodity manufactured, mined, or produced by it or under its authority, or which it may own in whole or in part, or in which it may have any interest, direct or indirect (except timber and the manufactured products thereof and such articles or commodities as may be necessary and intended for its use as a common carrier) (R. —).

The District Court filed its opinion, findings of fact and conclusions of law July 1, 1935, holding that the evidence failed to establish that appellee has such interest in the articles and commodities transported by it as to make the transportation unlawful under the statute.

D

CASES SUSTAINING JURISDICTION

The following decisions are believed to sustain the jurisdiction of this Court:

Interstate Commerce Commission v. *Baird*, 194 U. S. 25.

Swift & Company v. *United States*, 276 U. S. 311.

United States v. *California Cooperative Canneries*, 279 U. S. 553.

United States v. *Reading Co.*, 253 U. S. 26.

United States v. *Chicago North Shore and Milwaukee Ry. Co.*, 288 U. S. 1.

Respectfully submitted.

STANLEY REED,
Solicitor General.
JOHN DICKINSON,
Assistant Attorney General.
CARL MCFARLAND,
ELMER B. COLLINS,
Special Assistants to the Attorney General.
BURT L. SMELKER,
Attorney, Interstate Commerce Commission.

AUGUST 28th, 1935.

U. S. GOVERNMENT PRINTING OFFICE: 1935

FILE COPY

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CLERK

No. 660

In the Supreme Court of the United States

OCTOBER TERM, 1935

THE UNITED STATES OF AMERICA, APPELLANT.

v.

ELGIN, JOLIET & EASTERN RAILWAY COMPANY

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

BRIEF FOR THE UNITED STATES

INDEX

	Page
Opinion below	1
Jurisdiction	1
Questions presented	2
Statute involved	3
Statement	3
Specification of errors	15
Summary of argument	17
Argument:	
I. Appellee's interest within the meaning of the Commodities Clause in the commodities owned by the producing companies is established by reason of the combination in the United States Steel Corporation, a holding company, of all of the stock of appellee and of the producing companies	23
II. The weight of the evidence establishes that the United States Steel Corporation in practice actively exercises the power of control vested in it by its ownership of the stock of appellee and of the producing subsidiaries to manage and to direct their affairs as departments and branches of one industrial organization	39
1. Introductory	41
2. Management, offices and counsel	50
Formation of the Steel Corporation	50
Interlocking directors, 1901–20	51
Method of selecting appellee's officers and directors	52
Declaration of dividends	54
Directors' approval of contracts	57
Location of offices	57
Division counsel	58
Meetings of presidents	59
3. Control of capital expenditures	60
4. Control of surplus funds: the advance account	65
5. Control of the clearing of inter-subsidiary transactions	68
6. Bonus Plan, Pension Plan, and Stock Purchase Plan	70
Bonus Plan	70
Pension Plan	72
Stock Purchase Plan	73

Argument—Continued.
II—Continued. Page
7. Reports, budget estimates, inter-subsidiary purchases, and bank accounts ---- 73
Reports ---- 73
Budget estimates ---- 74
Inter-subsidiary purchases ---- 75
Bank accounts of subsidiaries ---- 78
8. Trackage agreement with the Chicago and Eastern Illinois Railroad Company ---- 79
9. Lease of Lake Shore and Eastern Railway Company ---- 85
10. Conclusion ---- 100
III. There is nothing in (a) the character of the transportation service which appellee performs for the producing subsidiaries of the United States Steel Corporation or (b) the manner in which appellee's affiliation with such subsidiaries exists, i. e., through the combination of their stock in a holding company, which prevents the Commodities Clause from being applicable to the transportation of the commodities in question ---- 103
(A) As to the character of the transportation service which appellee performs for the Steel Corporation subsidiaries ---- 105
(B) As to the manner of appellee's affiliation with the producing subsidiaries ---- 114
(1) Section 15 (13) of the Interstate Commerce Act ---- 121
(2) Legislative history of the Commodities Clause ---- 138
(3) Construction by the Attorney General ---- 145
Conclusion ---- 148

CITATIONS

Cases:

Adriatic Mining Co. v. *C. & N. W. Ry. Co.*, 78 I. C. C. 611 ---- 138
Allowances for Stacking, 179 I. C. C. 780 ---- 131
Allowances to Elevators by U. P. R. R., 12 I. C. C. 85 ---- 131
Allowances to Kanawha, Glen Jean & Eastern, 41 I. C. C. 53 ---- 132
American Steel & Wire Co. v. *Newburgh & S. S. Ry. Co.*, 55 I. C. C. 353 ---- 129
Armour & Co. v. *E. P. & S. W. Co.*, 52 I. C. C. 240 ---- 131
A. T. & S. F. Ry. Co. v. *Kansas City Stock Yards Co.*, 33 I. C. C. 92 ---- 131
Benwood & Wheeling Connecting Ry. Co. v. *P. C. C. & St. L. R. R. Co.*, 62 I. C. C. 357 ---- 129
Brimstone R. R. Co. v. *United States*, 276 U. S. 104 ---- 130

Cases—Continued. Page

Buffalo Union Furnace Co. v. *L. S. & M. S. Ry. Co.*, 21 I. C. C. 620 131
Campbell's Creek Coal Co. v. *A. A. R. R. Co.*, 29 I. C. C. 682 138
Carnegie Steel Company v. *Director General*, 80 I. C. C. 269 129
Central R. R. Co. of New Jersey v. *United States*, 229 Fed. 501, cert. den. 241 U. S. 658 131
Class Rates from Chestnut Ridge Railway Stations, 41 I. C. C. 62 134
Construction of Line by Jefferson Southwestern, 86 I. C. C. 796 ..... 134, 135
Del., Lack. & West. R. R. v. *United States*, 231 U. S. 363 38
Donner Steel Co. v. *D. L. & W. R. R. Co.*, 57 I. C. C. 745 131
Duplex Co. v. *Deering*, 254 U. S. 443 140
Finkbine Lumber Co. v. *Gulf & S. I. R. Co.*, 269 Fed. 933, cert. den., 255 U. S. 574 ..... 128, 131
Florida v. *United States*, 282 U. S. 194 38
Galveston Export Co. v. *T. & F. S. Ry. Co.*, 96 I. C. C. 141 131
General Electric Co. v. *N. Y. C. & H. R. R. R. Co.*, 14 I. C. C. 237 131
New York Central & H. R. R. R. Co. v. *General Electric Co.*, 219 N. Y. 227, 114 N. E. 115, certiorari denied, 243 U. S. 636 131
In the Matter of Divisions of Joint Rates and other Allowances to Terminal Railroads, 10 I. C. C. 385 86
Industrial Railways Case, 29 I. C. C. 212 125
Industrial Railways Case, 32 I. C. C. 129 ..... 126, 133
Interstate Commerce Commission v. *Diffenbaugh*, 222 U. S. 42 ..... 125, 131
Jones & Laughlin Steel Co. v. *Director General*, 60 I. C. C. 325 129
Jones & Laughlin Steel Co. v. *P. & L. E. R. R. Co.*, 53 I. C. C. 556 129
Lackawanna Steel Co. v. *S. B. Ry. Co.*, 56 I. C. C. 684 129
Manufacturers Railway Co. v. *St. L., I. M. & S. Ry. Co.*, 28 I. C. C. 93, 21 I. C. C. 304, 32 I. C. C. 100 126–127
Manufacturers Ry. Co. v. *United States*, 246 U. S. 457 127
Merchants Cotton Press & Storage Co. v *I. C. R. R. Co.*, 17 I. C. C. 98 131
Merchants Warehouse Co. v. *United States*, 283 U. S. 501 131
Morgantown & Kingwood Divisions, 49 I. C. C. 540 130
Mumby Lbr. & Shingle Co. v. *Chicago, M. St. P. & P. Ry. Co.*, 200 I. C. C. 261 131
National Malleable Castings Co. v. *P. & L. E. R. R. Co.*, 51 I. C. C. 537 ..... 128, 129, 131
National Tube Co. v. *Lake Terminal R. R. Co.*, 55 I. C. C. 469 129

Cases—Continued. Page

New England Divisions Case, 261 U. S. 184 130
Northern Securities Co. v. *United States*, 193 U. S. 197 36
O'Keefe v. *United States*, 240 U. S. 294 ..... 126, 127, 142
Pneumatic Scales Corporation v. *A. & R. R. R. Co.*, 51 I. C. C. 686 131
Propriety of Operating Practices—Terminal Services, 209 I. C. C. 11 131
Second Industrial Railways Case, 34 I. C. C. 596 133
Solvay Process Co. v. *D., L. & W. R. R. Co.*, 14 I. C. C. 246 .. 131
Standard Oil Co. v. *United States*, 221 U. S. 1 36
Sterling & Son Co. v. *M. C. R. R. Co.*, 21 I. C. C. 451 131
Tap Line Cases, 234 U. S. 1 ..... 125, 126, 127, 141
Texas & P. R. Co. v. *Abilene Cotton Oil Co.*, 204 U. S. 426 .. 38
Texas & P. Ry. Co. v. *Thompson*, 288 Fed. 167 128
The Alaska Investigation, 44 I. C. C. 680 138
The Tap Line Case, 23 I. C. C. 277 125
The Tap Line Case, 23 I. C. C. 549 125
The Tap Line Case, 31 I. C. C. 490 126
United States v. *Butler County R. R. Co.*, 234 U. S. 29 127
U. S. v. *Delaware & Hudson Co.*, 213 U. S. 366 ..... 26, 28, 111, 112, 113, 116, 144, 147
United States v. *Del., Lack. & West. R. R.*, 238 U. S. 516 .. 18, 23, 33, 38, 41, 116, 117, 120
United States v. *Lehigh Valley R. R. Co.*, 220 U. S. 257 .. 116, 118
United States v. *Lehigh Valley R. R. Co.*, 254 U. S. 255 117
United States v. *Reading Co.*, 253 U. S. 26 ..... 18, 19, 25, 26, 27, 29, 30, 32, 35, 36, 39, 41, 49, 101, 115, 120
United States v. *Reading Co.*, 226 Fed. 229 ..... 27, 33
United States v. *Shreveport Grain & Elevator Co.*, 287 U. S. 77 140
United States v. *Trans-Missouri Freight Association*, 166 U. S. 290 140
United States v. *U. S. Steel Corp.*, 251 U. S. 417 36
Virginian Railway v. *United States*, 272 U. S. 658 38
Wisconsin R. R. Comm. v. *C., B. & Q. R. R. Co.*, 257 U. S. 563 . 140

Statutes:

Interstate Commerce Act, Sec. 15 (13) 121

Miscellaneous:

Bonbright & Means, The Holding Company (1932), pp. 11–20 35
Jones, The Trust Problem in the United States (1921), pp. 27–28 35
Seager and Gulick, Trust and Corporation Problems (1929), pp. 6–7 35
Watkins, Industrial Combinations and Public Policy (1927), p. xiv 35
17th Ann. Rep. I. C. C., Dec. 15, 1903 ..... 123, 124
18th Ann. Rep. I. C. C., Dec. 19, 1904 ..... 123, 124
19th Ann. Rep. I. C. C., Dec. 14, 1905 122
24th Ann. Rep. I. C. C., Dec. 21, 1910 107

Miscellaneous—Continued.

	Page
Ann. Reports, Attorney General:	
Dec. 10, 1909, pp. 3–4	146
Dec. 10, 1910, pp. 6–7	146
Dec. 2, 1912, pp. 23–24	146
Dec. 1, 1913, pp. 25–26	146
Dec. 7, 1914, pp. 5–7, 22–23	146
Dec. 6, 1915, pp. 7–8	146
Dec. 4, 1916, pp. 7–8	146
Dec. 4, 1917, pp. 7–8	146
Dec. 5, 1927, pp. 26–27	146
Dec. 1, 1930, pp. 26–29	146
Jan. 5, 1934, pp. 27–28	146
Jan. 5, 1935, p. 30	146
Opinions, Attorney General, Vol. 29, p. 587	146
40 Cong. Rec., Pt. 7, 59th Cong., 1st sess., pp. 6455, 6456, 6459, 6460, 6496, 6498, 6499, 6500, 6551, 6559, 6561, 6562, 6563, 6564, 6565, 6566, 6567, 6568, 6569, 6570, 7011, 7012, 7013, 7014, 7015, 7016, 7017	140–141, 143, 144
H. R. 26983, 61st Cong., 2nd sess. (45 Cong. Rec., Pt. 8, p. 8479)	145
H. R. 20470, 63rd Cong., 3rd sess. (52 Cong. Rec., Pt. 1, p. 838)	145

In the Supreme Court of the United States

OCTOBER TERM 1935

No. 660

THE UNITED STATES OF AMERICA, APPELLANT

v.

ELGIN, JOLIET & EASTERN RAILWAY COMPANY

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the United States District Court for the Northern District of Illinois (R. 500–512) is reported in 11 F. Supp. 435.

JURISDICTION

The decree of the District Court was entered on August 28, 1935. (R. 512.) Petition for appeal was filed August 28, 1935 (R. 512) and was allowed the same day (R. 515).

Jurisdiction of this Court is conferred by the Expediting Act of February 11, 1903, c. 544, 32 Stat. 823 (U. S. C., Title 49, Sec. 45), and by Section 238

of the Judicial Code as amended by the Act of February 13, 1925, c. 229, 43 Stat. 936, 938 (U. S. C., Title 28, Sec. 345).

QUESTIONS PRESENTED

This case involves the question whether the transportation in interstate commerce by appellee, a subsidiary of the United States Steel Corporation, of commodities owned by producing subsidiaries of the latter corporation (other than timber and timber products and commodities necessary and intended for use by appellee in its business as a common carrier) constitutes a violation of Section 1 (8) of the Interstate Commerce Act, commonly called the Commodities Clause. The more important issues presented are:

(1) Whether, when a holding company owns a subsidiary railroad company and also subsidiary producing companies, the railroad company has an interest within the meaning of the Commodities Clause in the commodities owned by the producing companies.

(2) Whether, if in order to establish a violation of the Commodities Clause in such a case it is necessary to show that the holding company in practice dominates, supervises, and directs the affairs of the railroad company and the producing companies as departments or branches of one industrial organization, such a showing has been made in the present case.

(3) Whether there is anything in (a) the character of the service which appellee performs for the industry with which it is affiliated or (b) the manner in which the affiliation exists, that is, by ownership of the stock of appellee, which prevents the Commodities Clause from being applicable to the transportation of the commodities in question.

STATUTE INVOLVED

The Commodities Clause reads as follows:

> From and after May first, nineteen hundred and eight, it shall be unlawful for any railroad company to transport from any State, Territory, or the District of Columbia, to any other State, Territory, or the District of Columbia, or to any foreign country, any article or commodity, other than timber and the manufactured products thereof, manufactured, mined, or produced by it, or under its authority, or which it may own in whole, or in part, or in which it may have any interest direct or indirect except such articles or commodities as may be necessary and intended for its use in the conduct of its business as a common carrier. (Act of June 29, 1906, c. 3591, 34 Stat. 584, 585 (U. S. C., Title 49, Sec. 1 (8)).)

STATEMENT

This is a suit in equity brought in the District Court for Northern Illinois by the United States against appellee, a common carrier railroad com-

pany, seeking to restrain as in violation of the Commodities Clause the transportation in interstate commerce of certain commodities. Appellee is a subsidiary of the United States Steel Corporation and the commodities, the transportation of which is alleged to be unlawful, are owned at the time of transportation by other subsidiaries of the United States Steel Corporation.

Appellee is a common carrier by railroad, incorporated under the laws of Illinois and Indiana, and subject to all of the provisions of the Interstate Commerce Act as amended. (R. 2, 15.) It operates a line of railroad (with branches) extending from Waukegan, Illinois, located upon Lake Michigan north of Chicago, and running southwest, then south, then southeast, and finally east to Porter, Indiana. (R. 2, 15; map, Def. Ex. 14, R. 406.) It forms what is known as the Chicago Outer Belt Line. (*Ibid.*) Its length is approximately 195 miles. (Def. Ex. 36, R. 439.) It is a most strategically located road, connecting with every railroad entering the city of Chicago. (R. 90; map, Def. Ex. 14, R. 406.) It is thus able to offer shippers along its line a choice of routes which ordinarily cannot be afforded by a single trunk line (R. 90) and, by making it possible to avoid the congested area at Chicago, to provide an expeditious means of moving freight from the east to the west and *vice versa*. (R. 105–106, 107–108, 109–110, 110–111, 113, 114, 115–116.)

Appellee is one of the subsidiaries of the United States Steel Corporation, which was formed in 1901 and which owns all of appellee's capital stock. (R. 5, 15, 104.) The United States Steel Corporation is not an operating company which produces or transports commodities in its own name, but is a holding company owning the capital stock of its various subsidiaries. (R. 41.) Appellee's road antedates the formation of the Steel Corporation by many years, its operations having commenced in 1884. (R. 104.) Its stock was owned by the general public until 1898 or 1899, when it was all acquired by the Federal Steel Company (R. 104), which became one of the Steel Corporation subsidiaries (R. 5, 15).

In 1909 appellee acquired by lease the properties of the Chicago, Lake Shore and Eastern Railway Company (hereinafter called the Lake Shore), all of whose stock was and is owned by the Illinois Steel Company, which in turn is one of the wholly owned subsidiaries of the United States Steel Corporation. (R. 4, 15; Gov. Ex. X, R. 365.) The real property thus acquired consists largely of tracks and spurs located wholly within the plants of the Illinois Steel Company. (R. 4, 15.) The main line leased from the Lake Shore is only some 16 miles in length. (Def. Ex. 36, R. 439.)

Prior to the lease of the Lake Shore in 1909, the appellee received 75% of its business from the general public, and only 25% from the Steel Corpora-

tion subsidiaries (Gov. Ex. B, R. 132, 136), and, indeed, over one-half of this 25% was business enjoyed by appellee prior to the formation of the Federal Steel Company or the United States Steel Corporation (Gov. Ex. B, R. 134). The Lake Shore, however, served "practically one industry, the Illinois Steel Company" (Gov. Ex. B, R. 135; R. 28), its haul on the larger portion of traffic received from connecting lines being only about 11 miles (Gov. Ex. B, R. 141). It had a large volume of business. (R. 29.) By virtue of the lease appellee succeeded to this traffic. Appellee's tonnage is now 60% from the United States Steel Corporation and 40% from outside sources. (R. 90.)

Under a trackage agreement dated February 1, 1909, between the Lake Shore and the Chicago & Eastern Illinois Railroad Company (hereinafter called the Chicago and Eastern) the former road enjoyed the right to haul with its trains over the line of the latter road freight from mines and quarries owned or controlled by subsidiaries of the Steel Corporation and consigned to subsidiaries of that Corporation. (R. 30–31; Gov. Ex. Y, R. 389.) Appellee acquired this trackage right upon its lease of the Lake Shore. (R. 31.) The length of the line of the Chicago and Eastern over which the trackage right is enjoyed is approximately 191 miles.[1] (Def. Ex. 36, R. 439.)

[1] The petition incorrectly described the line from Chicago Heights, Illinois to Rossville Junction, Illinois, a distance of 80 miles, as part of the line of the Lake Shore (R. 3) and

Elgin, Joliet and Eastern
Railway Company
CHICAGO
OUTER
BELT LINE
SCALE OF MILES.
0 1 2 3 4 5 6 12 18 24
W I S.
KENOSHA
LAKE
McHENRY
KANE
DU PAGE
COOK
KENDALL
GRUNDY
WILL
LAKE
PORTER
I L L.
I N D.
L A K E M I C H I G A N
WAUKEGAN
NORTH CHICAGO
LIBERTYVILLE
RONDOUT
LEITHTON
BARRINGTON
ELGIN
SPAULDING
MUNGER
WAYNE
BIGALTON
WEST CHICAGO
GENEVA
WHEATON
ELECTRIC JC.
EOLA
AURORA
NORTH AURORA
WALKER
PLAINFIELD
COYNES
Lockport
ROCKDALE JC.
JOLIET
EAST JOLIET
MINOOKA
SOUTH CHICAGO
GARY
HAMMOND
EAST CHICAGO
CAVANAUGH
IVANHOE
VAN LEAR
HOBART
CROCKER
McCOOL
PORTER
VALPARAISO
CROWN POINT
BRISBANE
FRANKFORT
MATTESON
CHICAGO HEIGHTS
DYER
GRIFFITH
HARTSDALE
Chicago Ridge
Blue Island
Harvey
Brighton Park
Englewood
Mayfair
Franklin Park
Elmhurst
Downers Grove
Lisle
Naperville
Oswego
Yorkville
Plano
Sandwich
Somonauk
Dekalb
Sycamore
Cortland
Genoa
Kingston
Hinckley
Sugar Grove
Big Rock
Millbrook
Plattville
Millington
Morris
Seneca
Marseilles
Ottawa
Utica
Peru
La Salle
Oglesby
Deer Park
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Waukegan
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Kenosha
Racine
Milwaukee
Chicago
Evanston
Wilmette
Winnetka
Glencoe
Northbrook
Deerfield
Des Plaines
Maywood
Melrose Park
Bellwood
Hillside
Berkeley
Elmhurst
Villa Park
Lombard
Glen Ellyn
Wheaton
Winfield
Warrenville
Batavia
St. Charles
Geneva
Sugar Grove
Aurora
Oswego
Yorkville
Plano
Sandwich
Somonauk
Dekalb
Sycamore
Cortland
Genoa
Kingston
Hinckley
Sugar Grove
Big Rock
Millbrook
Plattville
Millington
Morris
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Ottawa
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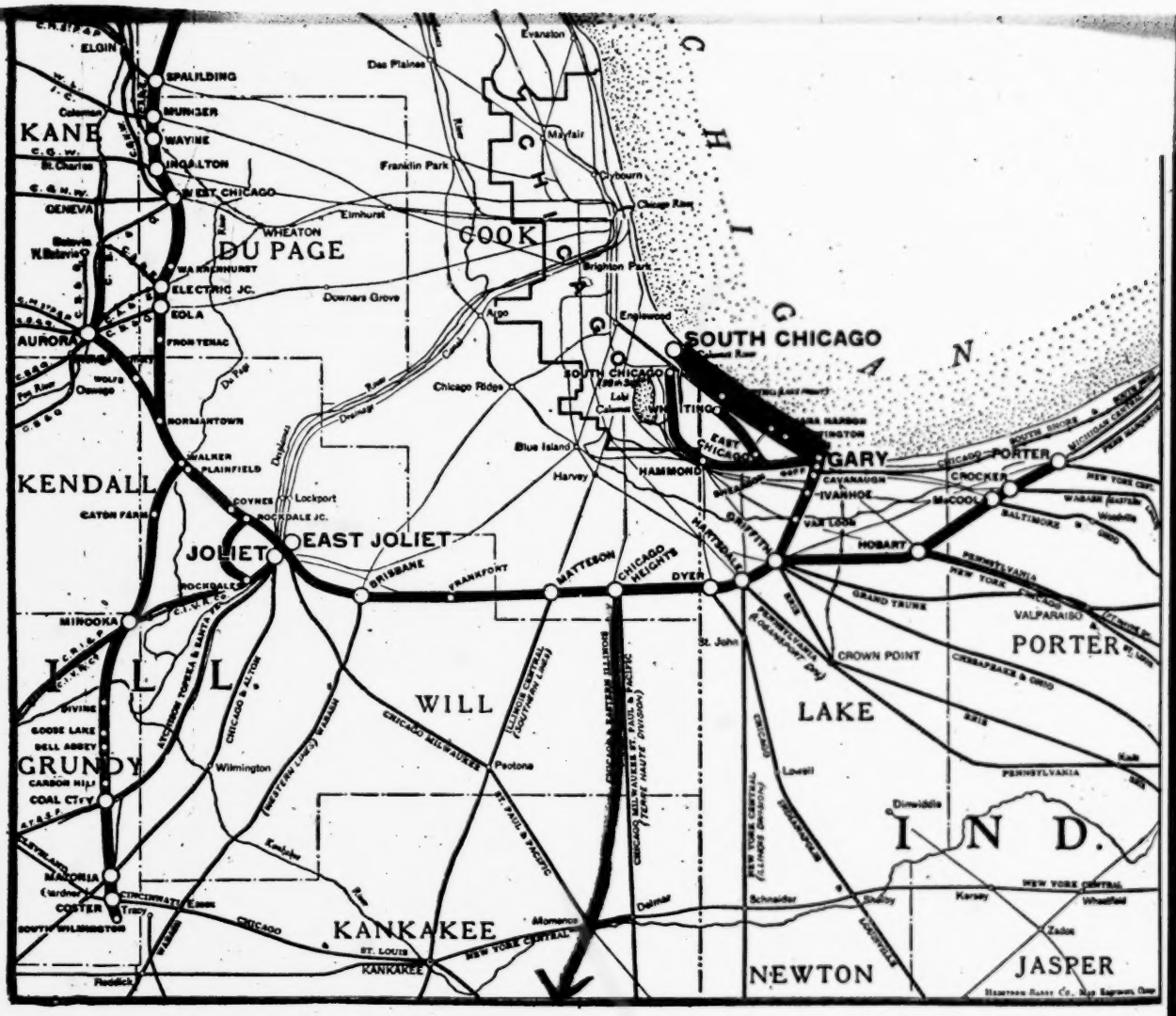

ROUTE TRAFFIC VIA THE ELGIN, JOLIET AND EASTERN RAILWAY COMPANY AND THE FOLLOWING CONNECTIONS:

Alton Railroad	Joliet-Mazonia, Ill.
A. T. & S. F. Railway Company	Joliet-Coal City, Ill.
B. & O. Railroad	McCool, Ind.
C. & E. I. Railway Co.	Chicago Heights, Ill.
C. & N. W. Ry. Co.	Barrington-Upton-Waukegan-West Chicago, Ill.
C. & O. Ry. Co.	Griffith, Ind.
C. A. & E. R. R. Co.	Electric Jct.-Wayne, Ill.
C. B. & Q. R. R. Co.	Eola, Ill.
C. C. C. & St. L. Ry.	Hartsdale, Ind. (Via N. Y. C.)
C. G. W. R. R. Co.	Ingalton, Ill.
C. I. & L. Ry. Co.	Dyer, Ind.
C. M. & G. Ry. Co.	Aurora-Joliet, Ill.
C. M. St. P. & P.	Chicago Heights (T. H. Div.), Spaulding-Rondout, Ill.
C. N. S. & M. R. R. Co.	Rondout, Ill.
C. R. I. & P. Ry. Co.	Joliet-Minooka, Ill.
C. S. S. & S. B. R. R. Co.	Goff, Ind.
Erie R. R. Co.	Griffith, Ind.
G. T. Ry. Co.	Griffith, Ind.
I. C. R. R. Co.	Matteson-Munger, Ill.
M. C. R. R. Co.	Hartsdale, Ind.-Joliet, Ill.
M. St. P. & S. S. M. Ry. Co.	Leithton, Ill.
N. Y. C. R. R. Co.	Porter, Ind.
N. Y. C. R. R. Co. (Ill. Div.)	Hartsdale, Ind.
N. Y. C. & St. L. R. R. Co.	Hobart, Ind.
Penn. R. R. Co. (Ft. Wayne Div.)	Hobart, Ind.
Penn. R. R. Co. (Logansport Div.)	Hartsdale, Ind.
P. M. Ry. Co.	Porter, Ind.
Wabash	Brisbane, Ill.-Crocker, Ind.

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Traffic Manager.

J. B. DAVIES,
General Freight Agent.

W. F. HUMMEL,
Asst. General Freight Agent.

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

GENERAL OFFICES, 208 South La Salle Street, CHICAGO, ILL.

There are a great many industries not in any way connected with the United States Steel Corporation located along the line of appellee. (R. 90.) It serves any shippers, including competitors of subsidiaries of the United States Steel Corporation. (R. 91.) It is party to about 2,000 tariffs as an initial or delivering line and to a great many tariffs as an intermediate line. (R. 90.) It actively solicits business on the basis of its specially strategical location. (R. 89–90.)

Appellee transports in interstate commerce a considerable volume of commodities (other than timber or timber products and commodities necessary and intended for its use as a common carrier) produced and owned by wholly owned subsidiaries of the United States Steel Corporation. (R. 4–5, 9–12, 13, 14, 15, 21–22, 81–84.) The commodities which appellee receives from the plants of various subsidiaries are destined in part to other subsidiary plants and in part to customers scattered throughout the country. (R. 81–84.)

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in the opinion below this error is repeated (R. 500–501). The evidence shows that that line is in fact part of the Chicago and Eastern over which trackage rights are enjoyed and that the main line leased from the Lake Shore (i. e., exclusive of second tracks, industrial tracks, and yard tracks and sidings) is only some 16 miles in length. (Def. Ex. 36, R. 439.)

Opposite this page is a map, furnished by counsel for appellee for use in this brief, showing in red that part of appellee's line which is leased from the Lake Shore, and showing in blue part of the line of the Chicago and Eastern over which trackage rights are enjoyed.

Appellee is a "Class I" railroad within the Interstate Commerce Commission's classification of steam railroads, which includes within that class all steam railroads whose annual railway operating revenues are regularly above $1,000,000. (Def. Ex. 41, Annual Report to Interstate Commerce Commisssion for year ending December 31, 1930, R. 125; and see Forty-Fourth Annual Report of Interstate Commerce Commission on Statistics of Railways in the United States for year ending December 31, 1930, pp. 215, 219.) Appellee's railway operating revenues in 1930, for example, were $21,807,616.06 (Def. Ex. 41), and were in excess of that amount for the years 1926, 1927, 1928, and 1929 (Def. Exs. 36, 37, 38, 39; R. 125, 429).

The petition (R. 1–14) filed originally on November 13, 1930, and as amended on February 26, 1932 (R. 1) alleged in substance that the ownership by the United States Steel Corporation of the stock of appellee and of the producing subsidiaries is employed in a manner not normal and usual with ordinary stockholders, but is so used as to dominate and control their respective affairs and to bring them under the coordinated control, management and direction of the United States Steel Corporation, and it recited divers practices and methods which among others were alleged to be means by which such control, management and direction are effectuated (R. 5–8). It alleged, further, that neither appellee nor any of such other subsidiaries is free to control and manage its own affairs in its own

interest and independently of the United States Steel Corporation; that they are in substance and reality one and the same organization consisting of many branches and departments which are managed, dominated, controlled, directed and coordinated by the United States Steel Corporation; and that the commodities in question are in fact mined, manufactured, and produced and transported by and under the same authority, namely, the United States Steel Corporation. (R. 8–9.) It alleged, finally, that by reason of the foregoing, appellee has such an interest in the commodities of the producing subsidiaries as to render their transportation in interstate commerce unlawful under the Commodities Clause, and prayed for an injunction restraining such transportation. (R. 12–13.)

The answer (R. 15–25) denied knowledge or information as to the allegations concerning the relations (other than stock ownership) between the Steel Corporation and the producing subsidiaries, and denied generally the allegations as to the relations (other than stock ownership) between the Steel Corporation and appellee, but admitted certain of the practices alleged either as set forth in the petition or as differently alleged in the answer (R. 15–21). It also alleged an affirmative defense, based apparently on the theory that appellee is an industrial railroad whose principal service is performed for the subsidiaries of the United States Steel Corporation, and that, as such, the transportation by it of the commodities of such subsidiaries

is not prohibited by the Commodities Clause. (R. 23–25.)[2]

The evidence on behalf of the United States consisted of testimony and voluminous documentary evidence relating to the following subjects, among others: interlocking directors; method of selecting appellee's directors and officers; manner in which appellee's directors function in the matter of dividend declarations and otherwise; location of appellee's general offices; employment of common counsel for appellee and other subsidiaries; meetings of the presidents of the subsidiaries; control by the United States Steel Corporation of the capital expenditures of its subsidiaries; control by the United States Steel Corporation of the surplus funds of its subsidiaries; control by the United States Steel Corporation of the clearing of inter-subsidiary transactions; participation by the subsidiaries in the United States Steel Corporation's bonus plan, pension plan and stock purchase plan; system of reports from subsidiaries maintained by the United States Steel Corporation; supervision by the United States Steel Corporation of the depositories of its subsidiaries; purchases by subsidiaries of materials and supplies from other subsidiaries; and the ne-

[2] The answer alleged as a second affirmative defense that if the Commodities Clause is construed to prohibit appellee from transporting the commodities of the producing subsidiaries it violates the due process clause of the Fifth Amendment. (R. 25.) Appellee did not urge this contention in its brief in the court below, nor was it considered by that court in its opinion. (R. 500–511.)

gotiations respecting the lease of the Lake Shore and the trackage agreement with the Chicago and Eastern.[3]

The evidence on behalf of the appellee related in part to the foregoing practices sought to be proved by the Government and in part to the following subjects, among others: volume and character of the transportation performed by appellee for the producing subsidiaries; publication and filing by appellee of tariffs covering all of its rates, and maintenance by appellee of separate accounts, in conformity with the requirements of the Interstate Commerce Act and the rules of the Interstate Commerce Commission; maintenance by appellee of its own separate operating force; testimony by shippers over appellee's line that they receive good service at fair rates and that in their dealings with appellee they do not come into contact with the officials of the United States Steel Corporation or of its producing subsidiaries; testimony by traffic officers of several connecting railroads that they receive fair treatment from appellee in the matter of divisions and that in their dealings with appellee they do not come into contact with the officials of the United States Steel Corporation or of its producing subsidiaries; and

[3] The evidence both on behalf of the Government and of appellee is considered elsewhere in the brief. (*Infra*, pp. 41–102.) The court below held against the Government on the weight of the evidence, and to avoid unnecessary repetition, a detailed discussion of the evidence is not presented in the statement.

testimony that the United States Steel Corporation or its producing subsidiaries do not issue instructions to appellee concerning the operation of its road, nor take part in the negotiation or making of divisions.

The United States requested detailed findings of fact (R. 442–480) to which appellee filed objections (R. 480–496). The United States District Court on July 1, 1935, rejected the findings requested by the United States and approved findings requested by appellee (R. 497–499), and on July 2, 1935, it filed an opinion (R. 500–511) holding that "no single piece of evidence taken alone, nor all taken together and considered as a whole warrant the inference that the defendant and the producing and manufacturing subsidiaries are under the domination, control, direction, and management of the Steel Corporation, in the sense that the defendant and the other subsidiaries are mere departments, branches, adjuncts, and instrumentalities of the Steel Corporation" and that "the evidence fails to show that the defendant has any interest, direct or indirect, legal or equitable, in the articles or commodities which it transports for the subsidiaries of the Steel Corporation" (R. 511).

The findings of fact approved by the District Court (R. 497–499) are extremely general. The court found that appellee has not transported in interstate commerce any commodity (other than timber and timber products and commodities necessary and intended for its use as a common car-

rier) which "actually, as a matter of fact, was manufactured, mined, or produced by it or under its authority or which actually, as a matter of fact, was owned in whole or in part by it or in which it actually, as a matter of fact, had an interest direct or indirect" (Fg. 1, R. 497); that appellee "conducted all of its affairs in its own name for itself and in the manner and form of a corporation" (Fg. 8, R. 498); that "neither the money, accounts, or properties" of appellee were commingled with those of the United States Steel Corporation (Fg. 12, R. 498); that "all transactions and communications" between the United States Steel Corporation and appellee were carried on "in the form of transactions and communications between two separate and distinct corporations and in such transactions and communications neither the two corporations nor their affairs were merged or mixed" (Fg. 7, R. 498); that the United States Steel Corporation whenever it desired any information concerning the affairs of, "or any other action" by, appellee "never obtained such information or took such action directly by its own officers or agents, but always made request for such information or action through the officers" of appellee "in the way which is customary and usual between corporations which are separate and distinct corporations" (Fg. 11, R. 498); that "neither the President, Secretary, Treasurer, Manager, or Superintendent" of appellee "nor any of its executive or managing operatives is an officer of or employee of the

United States Steel Corporation" (Fg. 10, R. 498); that "all communications and conferences" between the representatives of the United States Steel Corporation and of appellee respectively "whether properly characterized as orders, requests, advice, or the exercise of control" and whether originating with the Steel Corporation or with appellee related solely to appellee's "internal affairs" and "the relations" between it and the United States Steel Corporation, and did not relate to the transaction by appellee of "its transportation business" or "the relation" between appellee and "those for which it performed transportation business" (Fg. 4, R. 497); that the United States Steel Corporation did not conduct for appellee "any of its business affairs" with any other person or corporation, but appellee "conducted all of its business affairs" by its own officers and employees and not those of the United States Steel Corporation (Fg. 9, R. 498); that the United States Steel Corporation "never took any part in transporting any commodities" over appellee's road "or in operating or in managing the operation" of appellee's road or any of its operating facilities "or gave any directions or exercised any control over the transportation" conducted over appellee's road "or took any part in any of the transactions" between appellee and its shippers (Fg. 2, R. 497); that "the existence and free functioning" of appellee as a common carrier railroad corporation and a separate corporate entity was not

"destroyed or obstructed or interfered with by the United States Steel Corporation," nor was "the public recognition" of appellee as a common carrier railroad corporation "concealed, obstructed or given any particular character to distinguish it from other common carrier railroads by anything done by the United States Steel Corporation" (Fg. 3, R. 497); that appellee's "primary business" is that of a common carrier, and "its other acts and transactions were incidental to its primary business of transportation" (Fg. 2, R. 497); that appellee "regularly filed and published tariff rates covering the transportation services performed by it in accordance with the provisions of the law" and "did not discriminate against or in favor of any of its patrons either in service or in charges, but treated all alike and in accordance with its filed and published tariffs" (Fg. 5, R. 497–498); and that appellee did not exercise any authority nor contribute any property or labor in the production of the commodities transported by it, nor acquire any interest direct or indirect in any of such commodities, other than those excepted in the Commodities Clause (Fg. 6, R. 498).

From the final decree of the District Court dismissing the petition for want of equity (R. 512), this appeal was taken.

SPECIFICATION OF ERRORS

The District Court erred:

1. In entering the order and decree dismissing the petition for want of equity.

2. In holding that the evidence of record fails to establish that appellee has such interest in the commodities transported by it for the producing and manufacturing subsidiaries of the United States Steel Corporation as to make the transportation unlawful under the Commodities Clause.

3. In holding that all the evidence is insufficient to "warrant the inference that the defendant and the producing and manufacturing subsidiaries are under the domination, control, direction, and management of the Steel Corporation, in the sense that defendant and the other subsidiaries are mere departments, branches, adjuncts, and instrumentalities of the Steel Corporation."

4. In holding that "the evidence fails to show that the defendant has any interest, direct or indirect, legal or equitable, in the articles or commodities which it transports for the subsidiaries of the Steel Corporation."

5. In failing to hold and find from the evidence that appellee has such interest in the articles and commodities which it transports for the manufacturing and producing subsidiaries of the Steel Corporation as to make the transportation unlawful under the Commodities Clause.

6. In rejecting the findings of fact and conclusions of law requested by the United States, and in accepting and adopting those requested by appellee.

7. In excluding from consideration and thereby failing to give any weight or legal effect whatever to the most important and decisive basic and

fundamental facts of record concerning the relationship, business methods, and community of interest between the United States Steel Corporation, the appellee, and the manufacturing and producing subsidiaries of the Steel Corporation.

8. In failing to interpret properly and to give proper evidential weight and legal effect to such of the basic and elementary facts as were considered and recited in the opinion.

9. In admitting in evidence, and in giving weight and consideration to testimony concerning the irrelevant administrative question whether appellee discriminated against or in favor of any of its patrons either in service or in charges, and whether appellee complied with other provisions of the Interstate Commerce Act.

10. In failing and refusing to issue the injunction as prayed in the petition.

SUMMARY OF ARGUMENT

I. A railroad subsidiary of a holding company has an interest within the meaning of the Commodities Clause in commodities owned by producing subsidiaries of that holding company. The very purpose and function of a holding company, such as the United States Steel Corporation, is to control, direct, and supervise the management of its various subsidiaries. A holding company, together with its subsidiaries, constitutes one industrial organization consisting of various departments and branches, and such subsidiaries are in

fact the agents, instrumentalities, or departments of the holding company.

The Commodities Clause was designed to divorce transportation from production in order "to put an end to the injustice to the shipping public, which experience had shown to result from discriminations of various kinds, which inevitably grew up where a railroad company occupied the inconsistent positions of carrier and shipper." *United States* v. *Reading Co.*, 253 U. S. 26, 60–61. When appellee transports the commodities of the producing subsidiaries it plainly is in the "dual and inconsistent positions of public carrier and private shipper." *United States* v. *Del., Lack. & West. R. R.*, 238 U. S. 516, 525. Clearly, the evils sought to be reached by the Commodities Clause are no less present than if the Steel Corporation owned title directly to the railroad and producing properties: the incentive to discriminations against the shipping public is just as strong in the one case as in the other. It was on the basis of the foregoing considerations that this Court held in the *Reading* case, *supra*, that transportation by the Reading Railway Company of commodities of the Reading Coal Company, both being subsidiaries of a holding company, constituted a violation of the Commodities Clause. That case is square authority in support of the Government's contention here.

When the language of this Court's opinion in the *Reading* case, *supra*, is read in connection with the facts there presented, it would seem clear that the

decision in that case is based upon a recognition that the subsidiaries of a holding company are necessarily its mere agents, instrumentalities, or departments.

II. Notwithstanding the clear language in the *Reading* case, *supra*, the court below has held that even in the case of a holding company it is essential for the Government to establish by evidence of actual practices that the subsidiaries are administered as the agents, instrumentalities, or departments of the holding company. This is the rule which this Court has applied in the case where a railroad company owns the stock of a producing company. The court below failed to draw the clear distinction between a holding company, which is created and exists only for the purpose of directing the affairs of its subsidiaries, and an operating company which, though it may own stock in another company, is itself engaged directly in operations. In the latter case the stock may be held only for investment and "in a manner normal and usual with stockholders." *United States* v. *Reading Co., supra*, p. 63.

In any event, proof of the holding company relationship should have been held to be sufficient to establish at least *prima facie* that the subsidiaries are in fact administered as the agents, instrumentalities or departments of the United States Steel Corporation, and the court below should have approached the evidence with the view of ascertaining whether appellee has shown that the subsid-

iaries are not so administered. Appellee has clearly made no such showing in this case.

But even if the burden rested upon the Government to establish affirmatively, and without the benefit of such a presumption, that the subsidiaries are so administered in practice, the burden has been satisfied in this case by the clear weight of the evidence. The record shows a great variety of methods employed by the Steel Corporation for the purpose of administering the affairs of its subsidiaries as its mere agents, instrumentalities, or departments. It would unduly extend this Summary to attempt to summarize this evidence, and such a summary is believed to be unnecessary in view of the detailed topical headings in the index.

III. Appellee contended below that even if the subsidiaries were shown in fact to be the mere agents, instrumentalities, or departments of the Steel Corporation the transportation by appellee of commodities of the producing companies is, nevertheless, not in violation of the Commodities Clause. Appellee appeared to base its contention in part upon the claim that it is a so-called terminal or "industrial railroad." Appellee neither is nor resembles such a road. Moreover, there is no basis for the suggestion that the Commodities Clause does not apply to the transportation by such a road of commodities of an industrial corporation with which it is affiliated. Appellee also appeared to contend that a railroad subsidiary of a holding company may not, as a matter of law, be

deemed to have an interest within the Commodities Clause in commodities owned by subsidiary producing companies of that holding company. The *Reading* case, *supra*, is direct authority to the contrary.

Appellee's contention is based upon a fundamental misconception of the provisions and purposes of the Commodities Clause. The Commodities Clause expressly applies to any common carrier railroad company and to the transportation of all commodities which such railroad company owns or in which it has an interest, direct or indirect, except (1) timber and timber products, and (2) commodities necessary for common carrier purposes. The Commodities Clause, therefore, clearly applies to the transportation by appellee of all commodities (other than the excepted classes) which appellee owns or in which it has an interest direct or indirect.

The only question here is whether appellee has such an interest in the commodities owned by the producing subsidiaries. Appellee appears to contend that whether or not a railroad company has the forbidden interest in commodities owned by an affiliated producing corporation depends upon the manner or form of the affiliation. Under appellee's view if a railroad company owns the stock of a producing company, it may have an interest in the commodities of the producing company, but if the stock of a railroad company is owned by a producing company, or if the stock of both companies

is owned by a holding company the railroad company may not, under any circumstances, have an interest, direct or indirect, in such commodities.

The Commodities Clause does not prohibit ownership by a railroad company of the stock of a producing company; or ownership by a producing company of the stock of a railroad company; or ownership by a holding company of the stock of a railroad company and of a producing company; or common ownership by individuals of the stock of a railroad company and a producing company. The Commodities Clause is not a prohibition against stock ownership at all. It prohibits the transportation of commodities under certain circumstances. The effect of the decree in a suit in a Commodities Clause case is simply to enjoin the transportation of such commodities. Furthermore, the statute does not specify what constitutes an interest direct or indirect. It does not make such an interest turn upon stock-ownership. It does not mention stock or stock-ownership.

Decisions of this Court make it clear that whether a railroad has an interest direct or indirect in commodities is to be determined upon the basis of the relationship between the railroad and the owner of the commodities, considered in the light of the purpose of the Commodities Clause "to prevent railroads from occupying the dual and inconsistent positions of public carrier and private shipper" and "to separate the business of transpor-

tation from the business of selling." *United States* v. *Del., Lack. & West. R. R.*, 238 U. S. 516, 525.

There is plainly no basis for the suggestion that whether the Commodities Clause is being violated depends upon such a formal matter as the manner of affiliation between the railroad company and the producing company; or that the broad policy of the Commodities Clause may be frustrated by a mere rearrangement in the formal corporate relationships between the railroad company and the producing company; or that the Commodities Clause may be so construed as either to exempt certain common carrier railroads or as to exempt certain classes of commodities in addition to those specifically excepted by Congress from the operation of the Clause.

ARGUMENT

I

APPELLEE'S INTEREST WITHIN THE MEANING OF THE COMMODITIES CLAUSE IN THE COMMODITIES OWNED BY THE PRODUCING COMPANIES IS ESTABLISHED BY REASON OF THE COMBINATION IN THE UNITED STATES STEEL CORPORATION, A HOLDING COMPANY, OF ALL OF THE STOCK OF APPELLEE AND OF THE PRODUCING COMPANIES.

The court below has held (1) that even where a holding company owns all of the stock of a subsidiary railroad and all of the stock of other subsidiaries producing commodities which such railroad transports, the subsidiary railroad does not have an interest in such commodities within the meaning of

the Commodities Clause unless it is shown that in actual practice the holding company so supervises and directs the affairs of the subsidiary railroad and producing companies as to make them its mere departments and instrumentalities (R. 507); and (2) that the evidence in this case fails to establish such supervision and direction on the part of the United States Steel Corporation, the holding company (R. 511).

The Government contends that the court below erred in both aspects of its decision. Under Point II of the brief the evidence of record respecting the practices of the United States Steel Corporation in its dealings with its subsidiaries is considered in detail. It is the Government's contention that the weight of this evidence clearly establishes that the United States Steel Corporation in fact does actively supervise and direct the affairs of its subsidiaries, including appellee, and that in practice the United States Steel Corporation exercises the power of control, vested in it by its ownership of the stock of its subsidiaries, to manage and direct their affairs as departments and branches of one industrial organization.

In the Government's view, however, proof that the power of control is in fact so exercised is not essential in this case. It is the Government's contention that appellee's interest within the meaning of the Commodities Clause in the commodities in question is established by virtue of the admitted

fact that the United States Steel Corporation is a holding company owning all of the stock of appellee and of the producing subsidiaries. And the Government submits that this contention has the support both of the decision of this Court in *United States* v. *Reading Co.*, 253 U. S. 26, and of the reasoning upon which it is based.

In the *Reading* case the distinction between the case of a holding company and one in which, as in the earlier Commodities Clause cases, a railroad company owned stock in a producing company is made clear, for in that case both situations were presented. The Reading Company, a holding company, owned the stock of the Reading Railway Company and of the Reading Coal Company. The Central Railroad Company owned the stock of a coal company. The case presented the question whether the Reading Railway Company violated the Commodities Clause in transporting the commodities of the Reading Coal Company, and it also presented the different question whether the Central Railroad Company violated the Commodities Clause in transporting the commodities of the coal company in which it held stock. The Court dealt with each of these questions separately: The Reading Railway Company at 253 U. S. 26, 60–62, and the Central Railroad Company at 253 U. S. 26, 62–63. The court below in its opinion has confused these two separate holdings by the Court in the *Reading* case and has quoted (R. 507–508) as the

law applicable to a holding company the language in the *Reading* case dealing with the Central Railroad, despite the Court's express statement (253 U. S. 26, 60) in its discussion of the Reading Railway Company that the decision in the earlier Commodities Clause cases (*United States* v. *Delaware & Hudson Co.*, 213 U. S. 366), which involved ownership by a railroad of stock in a producing company, was not applicable to the case of a holding company.

The lower court in the *Reading* case had applied the decision of this Court in *United States* v. *Delaware & Hudson Co., supra,* respecting ownership by a railroad company of stock in a producing company, to the Reading Railway Company and had held that it did not violate the Commodities Clause in transporting the commodities of the Reading Coal Company. It had pointed out that neither corporation "has any title or interest, legal or equitable, in the real and personal property owned by the other"; that "this separation in legal contemplation is reinforced by a separation of corporate activity"; that "each keeps to its own affairs and does not meddle with the business of the other"; that the "Railway deals with the Coal & Iron Company at arm's length, as with other persons, making and carrying out contracts in the same way"; that the "Coal & Iron Company pays the regular tariff rates on all its coal transported by the Railway"; that "the Railway has not discriminated in favor of the Coal & Iron Company,

either in the distribution of cars or in the use of other facilities of transportation"; that "the operative management of the two corporations is distinct"; that the Coal Company "keeps its own separate books and its separate bank account"; that while the corporations have common directors and certain common officers, "the executive departments of the two companies are distinct in important particulars";[4] and that "the assets of the Coal & Iron Company are distinct from the assets of the Railway Company." (226 Fed. 229, 279–280.)

This Court in the *Reading* case characterized the decision of the lower court and pointed out its fundamental error in the following language (p. 60):

> The Circuit Judges centering their attention upon the fact that the Reading Railway Company did not own any of the stock of the Reading Coal Company; that the two companies had separate forces of operatives and separate accounting systems; and upon the importance of maintaining "the theory of separate corporate entity" as a legal doctrine, concluded, upon the authority of *United States* v. *Delaware & Hudson Co.*,

[4] The court pointed out that the Coal Company had its own general sales agent; that the general freight traffic manager of the Railway, one of its vice-presidents, was in no way connected with the Coal Company, and that this was also true of the general manager of the Railway, one of its vice-presidents, of the Railway's comptroller, and since 1914, of the Railway's president. (226 Fed. 229, 278, 280.)

213 U. S. 366, 413, that the evidence did not justify holding that in transporting the products of the Reading Coal Company's mines to market the Reading Railway Company was carrying a commodity "mined, or produced by it, or under its authority" or which it owned "in whole, or in part," or in which it had "any interest direct or indirect."

But the question which we have presented by this branch of the case is not the technical one of whether ownership by a railroad company of stock in a coal company renders it unlawful for the former to carry the product of the latter, for here the railroad company did not own any of the stock of the coal company. *The real question is whether combining in a single corporation the ownership of all of the stock of a carrier and of all of the stock of a coal company results in such community of interest or title in the product of the latter as to bring the case within the scope of the provisions of the act.* [Italics supplied.]

The issue which in the above language the Court described as the "real question" involved and which the Court stated was different from that presented in *United States* v. *Delaware & Hudson Co.*, *supra*, and therefore not controlled by the decision in that case, is the precise issue which the instant case presents. The affirmative answer given in the *Reading* case is controlling here.

The decision in the *Reading* case was based both upon the purpose of the Commodities Clause and upon a realistic recognition of the functions and activities of a holding company. The Court pointed out the obvious fact that the evil sought to be reached by the Commodities Clause is equally present whether the title to both the railroad and the producing properties is held in one corporation or whether such title is held by subsidiary corporations whose stock is combined through the medium of a holding company. The Court stated (pp. 60–61):

> The purpose of the commodity clause was to put an end to the injustice to the shipping public, which experience had shown to result from discriminations of various kinds, which inevitably grew up where a railroad company occupied the inconsistent positions of carrier and shipper. Plainly in such a case as we have here this evil would be present as fully as if the title to both the coal lands and the railroads were in the Holding Company, for all of the profits realized from the operations of the two must find their way ultimately into its treasury,—any discriminating practice which would harm the general shipper would profit the Holding Company. *Being thus clearly within the evil to be remedied, there remains the question whether such a controlling stock ownership in a corporation is fairly within the scope of the language of the statute.* [Italics supplied.]

After referring to the provisions of the Commodities Clause, the Court stated (pp. 61–62):

> Accepting the risk of obscuring the obvious by discussing it, and without splitting hairs as to where the naked legal title to the coal would be when in transit, we may be sure that it was mined and produced under the same "authority" that transported it over the railroad. All three of the Reading companies had the same officers and directors and it was under their authority that the mines were worked and the railroad operated, and they exercised that authority in the one case in precisely the same character as in the other—as officials of the Holding Company. *The manner in which the stock of the three was held resulted, and was intended to result, in the abdication of all independent corporate action by both the Railway Company and the Coal Company, involving as it did the surrender to the Holding Company of the entire conduct of their affairs. It would be to subordinate reality to legal form to hold that the coal mined by the Coal Company, under direction of the Holding Company's officials, was not produced by the same "authority" that operated the Reading Railway lines.* [Italics supplied.]

It seems clear that this Court's decision that the Reading Railway Company violated the Commodities Clause was based upon "the manner in which the stock" was held, that is, in a holding company,

which the Court said involved "the surrender to the Holding Company of the entire conduct" of the affairs of the subsidiary companies. The Court expressly stated that the question presented for decision was whether such a combination through *stock ownership* or "such a controlling *stock ownership*" is within the scope of the Commodities Clause. Apart from the maintenance of "separate forces of operatives and separate accounting systems", the only fact which the Court in its discussion of the Commodities Clause mentioned respecting the actual practice in the administration of the affairs of the subsidiaries, was the interlocking of directors and officers. The suggestion that the decision of the Court may have turned upon this fact does violence to the Court's discussion as a whole of this subject, to its statement of the question which was presented for decision and to its refusal to permit the realities of the relationship to be obscured by technicalities. It would be strange indeed if the question as to whether the Commodities Clause is violated should be made to depend upon whether or not the officers and directors of the holding company are permitted to serve also for the subsidiaries.[5]

[5] That the Court did not intend to adopt any such rule is made clear by its opinion with respect to the Central Railroad Company, which, as previously stated, owned the stock of a producing company. In such a case it had been held in prior decisions that it is essential for the Government to prove that in actual practice the producing company is ad-

The court below sought to distinguish the *Reading* case on still other grounds. It referred to the fact that the holding company in that case held title to the engines, cars and other equipment, so that the railroad was disabled from performing its functions as a carrier except with the aid of the holding company, and to the further fact that the Coal Company joined with the holding company in

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ministered as an agent or department of the railroad company. The Court in the *Reading* case applied those prior decisions to the Central Railroad Company, stating (pp. 62–63):

"* * * It results that it may confidently be stated that the law upon this subject now is, that while the ownership by a railroad company of shares of the capital stock of a mining company does not necessarily create an identity of corporate interest between the two such as to render it unlawful under the commodities clause for the railroad company to transport in interstate commerce the products of such mining company, yet where such ownership of stock is resorted to, not for the purpose of participating in the affairs of the corporation in which it is held in a manner normal and usual with stockholders, but for the purpose of making it a mere agent, or instrumentality or department of another company, the courts will look through the forms to the realities of the relation between the companies as if the corporate agency did not exist and will deal with them as the justice of the case may require."

The foregoing is the language which the court below quoted (R. 507–508) as stating the law applicable to a holding company. If the court below was correct in applying the same rule to both situations, and if this Court's ruling as to the Reading Railway Company is interpreted to turn upon the fact that there were interlocking directors and officers, it would necessarily follow that in the case of a railroad owning stock of a producing company the issue as to whether the Commodities Clause was being violated would also turn upon whether there were interlocking directors and officers.

a mortgage of their properties (R. 505–506).[6] This Court mentioned neither of these facts in its discussion of the Commodities Clause. If, as the court below has interpreted the decision in the *Reading* case, it is based not upon the power of control existing in the holding company, but upon the administration *in practice* of the affairs of the subsidiary companies as different departments of one industrial organization, these facts are obviously without relevancy. It is to be noted that the holding company, though it owned the equipment, leased it to the Reading Railway Company. (226 Fed. 229, 275, 278.) So far as concerns the power of control, that power was completely vested in the holding company by its ownership of the stock—and here it is just as complete in the United States Steel Corporation. Furthermore, when the Court in the *Reading* case stated (and the court below relied

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If this Court had intended to hold to that effect, it would clearly have so stated in its discussion of the Central Railroad Company. Instead, it stated the law as to ownership by a railroad of stock in a producing company in substantially the same language as had been used in the earlier cases. And see *United States* v. *Del., Lack. & West. R. R.*, 238 U. S. 516, 536:

"* * * It should not sell to a corporation with officers and offices in common,—for the policy of the statute requires that instead of being managed by the same officers, *they should studiously and in good faith avoid anything, either in contract or conduct, that remotely savors of joint action, joint interest or the dominance of one Company by the other.*" [Italics supplied.]

[6] The court below mistakenly states that the railroad joined in this mortgage. (R. 506.)

also on this language) that the "Holding Company had continued in active, dominating control of the Reading Railway Company and of the competing Central Railroad system, and also of the two coal companies, thus effectually suppressing all competition between the four companies and pooling their earnings" (p. 59), the Court was manifestly referring to the power of control and not to the manner in which the affairs of the subsidiary companies were in practice administered. The Court used the language last quoted in its consideration of the antitrust aspect of the case. In antitrust cases it is sufficient for the Government to establish power of control in the combination to suppress competition between the constituent companies, and such cases do not turn upon whether in practice the affairs of the constituent companies are administered as departments or branches of the combination. That the Court in dealing with the Reading Railway Company was not concerned with the question whether there was in practice an actual administration of the affairs of the constituent companies as departments or branches of the holding company is shown by the fact that immediately following its description of the creation of the holding company and before considering any subsequent facts, the Court characterized the effect of the reorganization under which the holding company was created, as follows (p. 48):

> Obviously, also, it made the Coal Company and the Railway Company mere agents or

> instrumentalities of the Holding Company—the mining and transportation departments of its business—for producing, purchasing, and selling coal and for transporting it to market. The Reading *Railway* Company and the Reading Coal Company each had thereafter but one stockholder,—the Holding Company—and their earnings were to be distributed not in proportion to the shares of their capital stocks, aggregating $28,000,000, but were to go to the creditors and shareholders of the Holding Company, with its mortgage debt of $135,000,000 and its capital stock of $140,000,000. The Holding Company thus served to pool the property, the activities and the profits of the three companies. *Northern Securities Co.* v. *United States,* 193 U. S. 197, 327, 362.

The decision of this Court as to the Reading Railway Company was based, we submit, upon a recognition of the realities of the relationship between a holding company and its subsidiaries and upon the character and functions of a holding company. The power of control is "inherent in that form of organization". See *United States* v. *Reading Co., supra,* p. 57; Watkins, Industrial Combinations and Public Policy (1927), p. xiv; Jones, The Trust Problem in the United States (1921), pp. 27–28; Seager and Gulick, Trust and Corporation Problems (1929), pp. 6–7; Bonbright & Means, The Holding Company (1932), pp. 11–20. It involves "the surrender to the Holding Company of the entire conduct of [the] affairs" of the sub-

sidiaries, and their "abdication of all independent corporate action". *United States* v. *Reading Co., supra,* pp. 62–63. Unlike an operating company, which though it owns stock in another company, is itself engaged in operations and may incidentally own such stock for investment and "in a manner normal and usual with stockholders" (*United States* v. *Reading Co., supra,* p. 63), a holding company is created and exists for the very purpose of exercising control over its subsidiaries, while permitting them "to retain the semblance of independent existence" (Seager and Gulick, *supra,* pp. 6–7). In cases under the anti-trust laws this Court has given practical recognition to the character and functions of holding companies. See *Northern Securities Co.* v. *United States,* 193 U. S. 197, 326–327; *Standard Oil Co.* v. *United States,* 221 U. S. 1, 75; *United States* v. *U. S. Steel Corp.,* 251 U. S. 417.[7] It is submitted that this same practical rec-

[7] In the *Northern Securities* case, *supra,* this Court stated (pp. 326–327):

"* * * The stockholders of these two competing companies disappeared, as such, for the moment, but immediately reappeared as stockholders of the holding company which was thereafter to guard the interests of both sets of stockholders as a unit, and to manage, or cause to be managed, both lines of railroad as if held *in one ownership.* Necessarily by this combination or arrangement the holding company in the fullest sense dominates the situation in the interest of those who were stockholders of the constituent companies; as much so, for every practical purpose, as if it had been itself a railroad corporation which had built, owned, and operated both lines for the exclusive benefit of its stockholders. Necessarily, also, the constituent com-

ognition, in the light of the purposes of the Commodities Clause, is also the basis of this Court's decision in the *Reading* case in applying that statute to the Reading Railway Company, and that the decision in that case and the reasoning upon which it is based are directly applicable here.

It would seem plain that the testimony given on behalf of appellee by shippers over its line and by the traffic officers of connecting railroads that they receive fair treatment in their dealings with appellee in the matter of rates and service [8] was im-

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panies ceased, under such a combination, to be in active competition for trade and commerce along their respective lines, and have become, practically, one powerful consolidated corporation, by the name of a holding corporation the principal, if not the sole, object for the formation of which was to carry out the purpose of the original combination under which competition between the constituent companies would cease. Those who were stockholders of the Great Northern and Northern Pacific and became stockholders in the holding company are now interested in preventing all competition between the two lines, and as owners of stock or of certificates of stock in the holding company, they will see to it that no competition is tolerated. They will take care that no persons are chosen directors of the holding company who will permit competition between the constituent companies. The result of the combination is that all the earnings of the constituent companies make a common fund in the hands of the Northern Securities Company to be distributed, not upon the basis of the earnings of the respective constituent companies, each acting exclusively in its own interest, but upon the basis of the certificates of stock issued by the holding company."

[8] It is to be noted that it is at least doubtful whether the court below was justified on the basis of such testimony in finding affirmatively that appellee "did not discriminate

material, as was also proof that appellee regularly files and publishes tariff rates and keeps its accounts in conformity with statutes and regulations applicable to railroad common carriers. The Commodities Clause is designed to "cure or prevent the evils that might result" if the railroad "occupied the dual and inconsistent position of public carrier and private shipper" and "the courts are not concerned with the question as to whether, in a particular case, there had been any discrimination against shippers or harm to other dealers. The statute is general and applies not only to those particular instances in which the carrier did use its power to the prejudice of the shipper, but to all shipments which, however innocent in themselves, come within the scope and probability of the evil to be prevented". *Del., Lack. & West. R. R.* v. *United States,* 231 U. S. 363, 370. Clearly also, a carrier cannot obtain immunity from the Commodities Clause because it claims to have conducted its

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against or in favor of any of its patrons either in service or in charges" (Fg. 7, R. 497–498). Such testimony does not prove that appellee practices no discrimination whatever; it proves only that the particular shippers and traffic officers who testified had no complaint to offer. Moreover, the question whether appellee practices discrimination between shippers is an administrative question entrusted, as respects interstate commerce, exclusively to the Interstate Commerce Commission. See *Florida* v. *United States,* 282 U. S. 194, 215; *Texas & P. R. Co.* v. *Abilene Cotton Oil Co,* 204 U. S. 426; *Virginian Railway* v. *United States,* 272 U. S. 658, 665–666.

business in conformity with other statutes, such as those regulating the filing of tariffs and the keeping of accounts.

II

THE WEIGHT OF THE EVIDENCE ESTABLISHES THAT THE UNITED STATES STEEL CORPORATION IN PRACTICE ACTIVELY EXERCISES THE POWER OF CONTROL VESTED IN IT BY ITS OWNERSHIP OF THE STOCK OF APPELLEE AND OF THE PRODUCING SUBSIDIARIES TO MANAGE AND TO DIRECT THEIR AFFAIRS AS DEPARTMENTS AND BRANCHES OF ONE INDUSTRIAL ORGANIZATION

As previously stated, the court below has held, contrary to what would seem to be the clear import of the decision of this Court in the *Reading* case, *supra,* that proof of the ownership by a holding company of the stock of a subsidiary railroad and of subsidiary producing companies is not sufficient to establish an interest on the part of the railroad within the Commodities Clause in the commodities of the producing companies. Instead, the court below has applied here the rule applicable to the case where a railroad owns stock in a producing company. This rule, as restated in the *Reading* case by this Court in its discussion of the Central Railroad Company, is as follows (pp. 62–63):

> It results that it may confidently be stated that the law upon this subject now is, that while the ownership by a railroad company of shares of the capital stock of a mining company does not necessarily create an identity of corporate interest between the two such as to render it unlawful under the commodities clause for the railroad company to

> transport in interstate commerce the products of such mining company, yet where such ownership of stock is resorted to, not for the purpose of participating in the affairs of the corporation in which it is held in a manner normal and usual with stockholders, but for the purpose of making it a mere agent, or instrumentality or department of another company, the courts will look through the forms to the realities of the relation between the companies as if the corporate agency did not exist and will deal with them as the justice of the case may require.

Even if it be assumed that the foregoing states the law applicable to the present case and that consequently the Government must establish that the ownership of the stock is used by the holding company for the purpose of making the subsidiaries its agents, instrumentalities or departments, it does not follow that the burden of proof resting upon the Government to establish that fact is the same here as in the case where a railroad owns the stock of a producing company. Considering that the very purpose of combining various subsidiaries in a holding company is to create a unified control over their affairs, considering the completeness of the power thus vested in the holding company, and considering that in practice such power must inevitably be exercised, it would seem that proof of the existence of a holding company should be sufficient to establish at least *prima facie* that the

stock ownership is in practice resorted to by the holding company for the purpose of making the subsidiaries its "mere agents or instrumentalities" (*United States* v. *Reading Co., supra,* p. 48). This much at least would seem to be the necessary effect of the Court's holding in the *Reading* case. We submit, therefore, that the burden was upon appellee to establish that in the conduct of its affairs it is not subject to the influence or domination of the Steel Corporation. (Compare *United States* v. *Del., Lack. & West. R. R.,* 238 U. S. 516, 536.) That such a showing has not been made by appellee will clearly appear from a consideration of the evidence.

But even if the burden rested upon the Government to establish affirmatively, and without the benefit of such a presumption, that in practice the Steel Corporation dominates and controls the affairs of appellee and of the producing subsidiaries so as to constitute them agencies or departments of one industrial organization, the Government submits that such a showing has been made in this case by the clear weight of the evidence.

1. Introductory

It is believed that it will be of material assistance to the Court in its examination of the evidence and will aid in simplifying and bringing more clearly into focus the issues of the fact presented, if before the evidence is analyzed in detail, consideration is

given briefly to certain aspects of the decision below and to certain of appellee's contentions.

It is apparent both from the findings and the opinion* of the court below that the feature of the evidence which most impressed the court was the fact that the transactions and communications between appellee and the Steel Corporation were carried on "in the form of transactions and communications" between separate corporations. This thought appears in Findings 7, 8, 9 and 11. (R. 498, 509.) Thus the court finds that:

> Defendant conducted all of its affairs in its own name for itself and in the manner and form of a corporation. (Fg. 8, R. 498, 509.)
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> Whenever any information concerning the affairs of defendant or any other action by defendant was desired by United States Steel Corporation, the United States Steel Corporation never obtained such information or took such action directly by its own officers or agents, but always made request for such information or action through the officers of defendant, in the way which is customary and usual between corporations which are separate and distinct corporations. (Fg. 11, R. 498, 509.)

In the same general category is the finding that "the moneys, accounts, and properties of each com-

*The findings are repeated verbatim in the opinion (R. 508–510).

pany were kept separate and distinct from the moneys, accounts, and properties of the other and the identity and integrity of the moneys, accounts and properties of each company were preserved without any mixture, commingling, or confusion." (Fg. 12, R. 498, 509–510.) Of course, appellee is in form a separate corporation and has its own books of account, its own properties and its own operating force. But the issue of fact under the Commodities Clause is plainly not one of form, but of substance. These findings by the court below are strikingly like those of the lower court in the *Reading* case. (*Supra,* pp. 26–27.) This Court in reversing that decision gave no weight to such considerations. (*Supra,* pp. 27–31.)

One other point is much stressed by the court below. This is the attempted distinction, in appellee's relations with the United States Steel Corporation, between the so-called "internal affairs" of appellee and its functions as a common carrier. (See Fgs. 2, 3, 4, R. 497, and the Opinion, R. 510, 511.) Thus the court finds:

> The primary business of defendant is that of a common carrier. Its other acts and transactions were incidental to its primary business of transportation. The United States Steel Corporation never took any part in transporting any commodities over the railroad of the defendant or in operating or in managing the operation of de-

> fendant's railroad or of any of the facilities of such operations or gave any directions or exercised any control over the transportation conducted over the railroad of defendant or took any part in any of the transactions between the defendant and the shippers over its railroad. (Fg. 2, R. 497, 508.)
>
> All communications and conferences between representatives of the United States Steel Corporation and representatives of defendant whether properly characterized as orders, requests, advice, or the exercise of control, and whether originating with the United States Steel Corporation or with defendant, related solely to the internal affairs of the defendant and to the relations between United States Steel Corporation and defendant, and did not relate to the transaction by defendant of its transportation business or the relation between the defendant and those for which it performed transportation business. (Fg. 4, R. 497, 508–509.)

It is difficult to understand precisely what the court means by "internal affairs." If the court has in mind that appellee runs its trains and enters into negotiations with shippers through its own staff of operatives, this point is also disposed of by this Court's decision in the *Reading* case where it similarly appeared that the Reading Railway had its own separate force of operatives. (*Supra*, pp. 26–27.) If by "internal affairs" the court has

reference to matters which normally arise between a corporation and its stockholders, the evidence, as will be seen, definitely precludes the possibility of applying any such distinction to the present case. To mention some items: the Steel Corporation decides, except in the case of negligible expenditures, whether appellee shall make improvements to its road (*infra,* pp. 60–64); it draws into its control appellee's surplus funds (*infra,* pp. 65–68); it decided whether appellee should lease the Chicago Lake Shore and Eastern Railway Company (*infra,* pp. 85–94); it participated in the negotiations respecting the agreement for trackage rights over the line of the Chicago and Eastern Illinois Railroad Company (*infra,* pp. 79–84). Clearly these matters have directly to do with the appellee's common carrier functions. And in the case of the lease and trackage agreement, the interest of the United States Steel Corporation and of its subsidiaries, as shippers, is found to be the dominant factor governing the decision as to these important railroad policies, in direct contravention of the purpose of the Commodities Clause. (*Infra,* pp. 79–100.) These are matters not even discussed either in the findings or opinion of the court below.

While appellee also relied principally upon the foregoing considerations stressed by the court below, appellee in addition made certain related, subsidiary contentions which it would be of advantage to consider here. With respect to some of the prac-

tices relied upon by the Government appellee urged that its participation was voluntary. Of course, where a holding company has control over subsidiaries it would be expected that the subsidiaries would voluntarily submit to its desires, and indeed, the greater the extent of control, the more compliant would be the acquiescence. In the Government's view, the issue of fact in this case cannot turn upon such a subjective matter as the asserted state of mind of appellee's officers. The issue is to be decided upon an objective consideration of what in practice was done as between the Steel Corporation and its subsidiaries. Only upon the basis of such a consideration can it be safely determined whether in practice the subsidiaries are subject, whether voluntarily or not, to the actual exercise by the Steel Corporation of its power of control.

Somewhat similar in character was appellee's reliance upon the fact that in the communications from the Steel Corporation to appellee, the language sometimes used was that of a "request" or a "recommendation." That the use of such expressions cannot safely be relied upon is apparent. It is by usage customary for a superior to address his subordinate in some such polite language, and indeed a subordinate may frequently be asked whether he is in accord with a proposal made by his superior. The subordinate is none the less such because he is so addressed. The only pertinent inquiries are whether the Steel Corporation ex-

pects its wishes to be complied with, and whether if the appellee desires to do something different it must first persuade the Steel Corporation officers to change their mind. Manifestly, the answer to these questions cannot turn upon the form of language used, but rather, again, upon an objective consideration of what in practice was done.

As to some practices appellee pressed still another point. It was urged that some of the practices were in the interest of efficiency or economy. This contention amounts to no more than this: that the Steel Corporation having acquired control over its subsidiaries naturally found it to advantage to exercise that power of control. Appellee might have gone still further and urged that it was of advantage to the Steel Corporation to have as part of its organization the control of transportation facilities. These matters are beside the point. The Commodities Clause enacts a specific policy as part of the legislative system for regulating the railroads. The supposed advantages to be derived from a frustration of that policy can be of no avail to appellee.

One further matter requires brief mention. Appellee made the point, as to one or two practices, that the evidence related to appellee exclusively, as distinguished from the other subsidiaries. Presumably the thought was that in such instances the evidence had no bearing upon the extent of domination or control practiced as to the producing sub-

sidiaries.[10] As will appear, most of the evidence was not so restricted. Furthermore, any doubt on this score is set at rest by the testimony of Mr. Filbert, who was Assistant Comptroller of the Steel Corporation at the time of its formation in 1901, became its Comptroller in 1902, continuing as such until 1932, when he became Vice Chairman of its Finance Committee, and is now Chairman of the Finance Committee. (R. 48.) Mr. Filbert testified: "In the case of the manufacturing and raw material subsidiary companies, the Corporation exercised a much wider supervision and interest in the affairs or conduct of the affairs of those companies than it does in the case of railways." (R. 63.) Mr. Filbert stated that he has been "in close and intimate contact with the business affairs of the United States Steel Corporation during the period of time since its organization", and that "there is no one in the Steel Corporation now, no officer of the Steel Corporation now, who has intimate knowledge, as intimate knowledge for that period of time, as I have, since the retirement of Judge Gary and Mr. Farrell." (R. 58–59.) If, then, the Steel Corporation has been shown to supervise and direct the affairs of appellee as its

[10] It is to be noted in passing that any such contention on the part of appellee is inconsistent with the stand taken at the trial by appellee's counsel that the only relevant evidence was as to the relations between the appellee and the Steel Corporation. (R. 55.)

agent or instrumentality, such a showing has *a fortiori* been made as to the producing subsidiaries.

To summarize: The single issue of fact presented here, in the Government's view, is whether upon an objective consideration of the actual practices shown by the evidence, the inference is compelled that the Steel Corporation uses its ownership of stock for the purpose of making appellee and the producing subsidiaries its agents or instrumentalities or departments. *United States* v. *Reading Co.*, *supra*, pp. 62–63. Much of the evidence is in documentary form and can, therefore, fairly be considered as not in substantial dispute. In view, however, of the failure of the court below to make specific findings of fact, the Government has been compelled to present the evidence in fuller detail than would otherwise have been necessary. But even a full summary of the evidence, unless of inordinate length, cannot convey to the Court an adequate impression of the extent to which in the daily life of appellee the controlling arm of the Steel Corporation operates to direct its affairs. Such an impression can be obtained only by a reading of the voluminous correspondence in the record.

The Government does not rely on any single fact considered alone. Manifestly each fact must be weighed in the light of all other facts. If in the subsequent summary of the evidence, some subjects are treated more at length than others, this is not necessarily because such other facts are considered

of lesser significance, but rather because certain matters, being proved primarily by documentary evidence, require a more lengthy treatment.

2. Management, offices and counsel

Formation of the Steel Corporation.—The United States Steel Corporation was organized in 1901. (R. 104.) By November 11, 1901 its list of subsidiaries included 55 corporations. (Gov. Ex. E, R. 230–231.) Appellee was among its earliest subsidiaries, as were several of the producing subsidiaries mentioned in the petition. (*Ibid.*)

The Steel Corporation is not an operating company which produces or transports commodities in its own name, but is a holding company owning the capital stock of its various subsidiaries. (R. 41.) That its intended function is to coordinate the affairs of its various subsidiaries for the advantage of the Steel Corporation is obvious. Explicit recognition of this fact is contained in its by-laws which provide (Gov. Ex. M, R. 329):

> Powers and Duties of the President: In the absence of the Chairman of the Board and the Chairman of the Finance Committee, the President shall preside at all meetings of the stockholders and of the Board of Directors. Subject to the Board of Directors and the Finance Committee, he shall have general charge of the *business of the corporation relating to manufacturing, mining, and transportation and general operation.* [Italics supplied.]

It will be observed that some of the important practices referred to herein commenced very early in the life of the Steel Corporation. The clearance account (*infra*, p. 68), by which the Steel Corporation controls the clearing of intersubsidiary transactions dates from 1901. (Gov. Ex. E, R. 230.) The advance account (*infra*, p. 65), by means of which the Steel Corporation draws into its control the surplus funds of appellee was in existence by 1905. (Gov. Ex. E, R. 234.) The practice of exercising control over the capital expenditures of the subsidiaries (*infra*, p. 60) was in full swing by the close of 1907, and had apparently existed in some form during the preceding six years. (Gov. Ex. K, R. 292.) Although other practices began at a later date, it is apparent that almost immediately upon its formation the Steel Corporation acted swiftly to coordinate under its unified control the affairs of its subsidiaries.

Interlocking directors, 1901 to 1920.—Specifically as to appellee, this is shown by the immediate placement on its board of directors of important officials of the Steel Corporation. At the time of the formation of the Steel Corporation, Judge Gary, chairman of its board of directors, and Mr. Shearson, its Comptroller, were on the board of directors of appellee. (Gov. Ex. R, R. 354; R. 32–33, 47, 77.) During 1901 three more directors or officers of the Steel Corporation came on the board of directors of appellee, including Mr. Charles M.

Schwab, president of the Steel Corporation. (Gov. Ex. R, R. 354; Gov. Ex. D, R. 180; R. 77.) Thus within the first year of the formation of the Steel Corporation, five of appellee's directors were officers or directors of the Steel Corporation, and they included three of the most important officials of the Steel Corporation: Judge Gary, Mr. Shearson and Mr. Schwab. Furthermore, Judge Gary was continuously a director of appellee until 1920. (Gov. Ex. R, R. 354; R. 47, 77.) Mr. Trimble, secretary and treasurer of the Steel Corporation was a director of appellee from 1904 to 1920. (*Ibid.*) Mr. Filbert, Comptroller of the Steel Corporation, was a director of appellee from 1905 to 1920. (*Ibid.*) Mr. Farrell, president of the Steel Corporation, was a director of appellee from 1911 to 1920. (*Ibid.*) There were other interlocking directors. (*Ibid.*) The matter may be summed up as follows: at no time from 1901 to 1920 were there on the appellee's board of directors less than four officers or directors of the Steel Corporation, and as indicated, these included the most important officials of the Steel Corporation. (*Ibid.*)

Method of selecting appellee's officers and directors.—Although in 1920 these four officials of the Steel Corporation retired from appellee's board of directors, an equally effective device for continuing in the Steel Corporation the control of appellee's management is secured through the method by which appellee's officers and directors

are selected. At the annual meeting of the stockholders of appellee, appellee's president votes all of its stock under a proxy from the Steel Corporation. (R. 47, 30.) The president selects appellee's directors and recommends them to the stockholders (R. 42), but as the president represents all of the stock, he is, of course, merely making a recommendation to himself. Then, the directors meet to elect the officers, and the president names the officers for the directors to vote upon. (R. 42.) Mr. Banks, president of appellee from 1901 to 1931 (R. 26), testified that the directors in electing officers followed his recommendations without exception. (R. 42.) With some minor exceptions, the directors thus chosen have been selected from the officials or employees of appellee, and at the present time only its officials or employees serve as directors. (R. 47.) It is obvious that such a method of electing directors and officers draws all power into the hands of the president and reduces the directors and other officers merely to a title. It cannot be expected that officers and directors selected in that manner from the payroll employees and officials of appellee would find it possible to exercise any independent discretion. No other fact could illustrate more clearly the exceptionally dominant position occupied by appellee's president in relation to appellee's management. Appellee's president is its management. Under such circumstances all that the Steel Corporation needs in

order to supervise and direct the affairs of appellee, is a president obedient to the wishes of the Steel Corporation. Such a president is really nothing more than the Steel Corporation's agent, running one department of the Steel Corporation's business. The many letters between the Steel Corporation's officials and appellee's president must be read in the light of the foregoing considerations.

Declaration of dividends.—In the matter of dividend declarations is found one illustration of a president obedient to the wishes of the Steel Corporation and of a board of directors which might just as well be non-existent. The correspondence speaks for itself. (Gov. Ex. F, R. 261–274; Gov. Ex. E, R. 236, 237–238.) On December 1, 1922 Mr. Banks, appellee's president, wrote to Mr. Filbert, Comptroller of the Steel Corporation (Gov. Ex. F, R. 262):[11]

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[11] See similar letter of June 5, 1922 from Mr. Banks, who was also president of the Lake Shore Road, to Mr. Filbert:

"It has been customary for us to declare an extra dividend of five percent on our C., L. S. & E. Stock at our June meeting and I presume that it will be the wish of Judge Gary that we declare a dividend this year.

"Will you kindly advise so that we can prepare our minutes and arrange to declare such dividend?" (Gov. Ex. F, R. 261–262.)

See also Gov. Ex. E, R. 236, 237–238.

On June 15, 1923, Mr. Filbert wrote to Mr. Banks that "in reviewing with Judge Gary this morning the matter of dividends which we have to suggest that subsidiary companies declare in the month of June, he approved" certain recommendations made by Mr. Banks concerning a dividend on Lake Shore stock. (Gov. Ex. F, R. 263.)

> It has been customary for a number of years for the Chicago, Lake Shore and Eastern to declare an extra dividend of five percent on its Capital Stock during the month of December, and payable on or before the thirtieth day of December, and on the same date for the E., J. & E. to declare its regular four percent dividend.
>
> *Will you kindly take the matter up and see if we shall take same action this year?* [Italics supplied.]

On November 12, 1923 Mr. Banks wrote to Judge Gary that he would like to declare certain dividends on appellee's stock "if it meets with your [Judge Gary's] approval." (Gov. Ex. F, R. 264.) Mr. Filbert replied that Judge Gary had approved the recommendation. (*Ibid.*)

On December 15, 1924 Mr. Filbert wrote to Mr. Banks (Gov. Ex. F, R. 267):

> I beg to advise you that I reported today to Judge Gary the conclusion you and I reached last week to the effect that the E., J. & E. would declare a dividend of 4% on its Capital Stock this month and the C., L. S. & E. an extra dividend of 10% on its Capital Stock, and Judge Gary approved the same.

On November 29, 1929 Mr. Banks inquired of Mr. Filbert (Gov. Ex. F, R. 268):

> Will you please let me know as early as possible what dividends you would suggest we pay for the Elgin, Joliet and Eastern Railway in December 1929 in addition to our regular four percent dividend, and also if

> your suggestion is that we pay an extra ten percent dividend on the Chicago, Lake Shore and Eastern in December 1929?

A similar letter was written November 26, 1930. (Gov. Ex. F, R. 269.) Also on December 1, 1931. (Gov. Ex. F, R. 271.)

Several letters from Judge Gary to appellee's president are in substantially the following form (Gov. Ex. F, R. 261):

> It is recommended that the Directors of Elgin, Joliet and Eastern Railway Company at a meeting to be held sometime during the current month, declare a dividend of 4%, $400,000.00, on the capital stock, payable on or before December 30, 1921.
>
> Kindly acknowledge receipt.

See also letters of December 17, 1923, December 20, 1926, November 29, 1930, and December 8, 1931. (Gov. Ex. F, R. 266, 267, 270, 272.)

Mr. Banks testified: "As to what action, if any, the E., J. & E. Board of Directors took in the matter of dividends: I would suggest what the dividends are and they passed a resolution authorizing the payment." (R. 35.) That was after he had taken the matter up with Judge Gary or Mr. Filbert. (R. 35.) Mr. Banks testified that as a rule he took up the matter of dividends with Judge Gary or Mr. Filbert.[12] (R. 35, 56.)

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[12] Mr. Filbert recalled one instance in which there was disagreement between him and Mr. Banks, Mr. Banks declaring a larger dividend than Mr. Filbert thought advisable. (R. 56.)

Directors' approval of contracts.—Further illustration of the subordinate part played by appellee's directors is found in the method of approving contracts. At the annual meeting of appellee's directors held in June, the president reports to the board the contracts that have been entered into during the year, and they are approved by the board. (R. 38, 46.) This was the procedure followed with respect to all contracts, some 2313 in number, executed on behalf of appellee between 1910 and 1933.[13] (R. 38, 44.) Thus, appellee's directors are called upon to exercise their discretion after the contracts have been executed, and, indeed, when the directors' approval is given the contracts may already have been performed. (R. 46.)

Location of offices.—Appellee's general offices and those of the Illinois Steel Company, one of the producing subsidiaries, are located in the same building at 208 South La Salle St., Chicago. (R. 6, 17.) Other subsidiaries of the Steel Corporation also have offices in that building. (R. 123.) Appellee leases its space from the Illinois Steel Company. (R. 6, 17.) Appellee also has a New York office at 71 Broadway (Def. Exs. 36–40, R.

[13] This does not include the agreement modifying the trackage agreement with the Chicago and Eastern Illinois Railway Company, which was approved by a special resolution of appellee's directors some two months after the modification had been executed. (Gov. Ex. C, R. 178–179; Def. Ex. 2, R. 399.) (*Infra*, p. 84.)

429), which is the office of the United States Steel Corporation. (R. 78.)

Division counsel.—One firm of lawyers is designated as division counsel for all subsidiaries in the Chicago district. (Gov. Ex. H, R. 278–281; R. 35, 103.) On February 16, 1920, Mr. Filbert wrote to Mr. Banks (Gov. Ex. H, R. 278–279):

> I beg to advise that on recommendation of Mr. W. W. Corlett, General Solicitor, approved by Judge E. H. Gary, Chairman, an increase has been made, effective January 1, 1920, in the annual allowance to Knapp & Campbell, Division Counsel, Chicago.
>
> Because of this advance and in order that the apportionment of their total allowance to the subsidiary companies may more equitably reflect the services rendered to the respective companies interested, a revision has been made of the amounts chargeable the several companies. Under this revision your company is allotted the annual sum of $14,000 dating from January 1, 1920.
>
> Bills for the monthly amounts will be rendered as heretofore by Illinois Steel Co. We trust the arrangement will be satisfactory to you.

And see similar letter of January 4, 1923, notifying appellee that its share of the annual compensation paid to division counsel was increased to $23,940.00. (Gov. Ex. H, R. 279–280.) Indeed, as indicated above, at least until 1925 (Gov. Ex. H, R. 280–281) appellee did not pay its share of the compensation

directly to the division counsel, but was billed monthly by the Illinois Steel Company. For a number of years appellee has paid the division counsel directly. (R. 103.)[14]

Meetings of presidents.—The United States Steel Corporation holds periodical meetings of the presidents of the subsidiaries. (Gov. Ex. A, R. 127–131; R. 5–6, 16, 26–27, 48, 119, 122–123.) These meetings are called to discuss the results of past operations and the prospects for business in the future. (R. 27, 48, 119.) Mr. Banks, president of appellee from 1901 to 1931, testified that there might be several meetings a year and that while he did not attend all of them, he "attended probably half of them, maybe more." (R. 26.) The documentary evidence discloses that during the year 1931, appellee's president was summoned to meetings held on May 21, June 11, and October 22. (Gov. Ex. A, R. 130–131.) Thus, on October 5, 1931, Mr. Farrell,[15] president of the U. S. Steel

[14] It is a curious commentary on this situation to find the Comptroller of the United States Steel Corporation on January 28, 1925 taking up with the secretary and treasurer of the Illinois Steel Company the method by which appellee should pay its share of division counsel's compensation. (Gov. Ex. H, R. 280–281.)

[15] Note Mr. Farrell's letter of July 11, 1929, to appellee's president (Gov. Ex. A, R. 128):

"Please have Mr. S. M. Rogers come prepared to make a report on the operations of your company at our next Presidents Meeting, which is to be held on July 25th.

"This report need not be in too much detail but it should be a comprehensive review of your activities."

Corporation, wrote to appellee's president (Gov. Ex. A, R. 131):

> Kindly arrange to attend conference of Corporation Officials in this office on Thursday, October 22nd, 10:30 A. M. Advise.

And see telegrams of July 2, 1929, and July 3, 1929, and letters of May 1, 1931, and June 1, 1931. (Gov. Ex. A, R. 127, 128, 130.)

3. Control of capital expenditures

The subsidiaries of the Steel Corporation, including appellee, may not make expenditures for improvements, except those minor in extent, without first obtaining the approval and consent of the Finance Committee of the Steel Corporation. (R. 49–52.) At the present time only those expenditures for improvements involving an outlay of less than $5,000 do not require the approval and consent of the Finance Committee. (R. 50–51.)[16]

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[16] From 1920 to 1932 the limit was $10,000. (R. 50–51.) See letter of May 10, 1920, (Gov. Ex. K, R. 302) from W. J. Filbert, Comptroller of the Steel Corporation, to presidents of subsidiary companies, which refers to the resolution of the Finance Committee increasing the limit from $5,000 to $10,000 and which states: "Under the above ruling, the limit of appropriations for improvements which may be entered as so-called 'Company' appropriations and the work thereunder commenced without first obtaining recommendation of the Finance Committee, is raised from $5,000 to $10,000, but all such appropriations should as heretofore be promptly forwarded to the Corporation in accordance with the existing rules. Will you please advise such officials and departments of your company as are interested." By a resolution of the

The procedure by which the approval of the Finance Committee was obtained is fully described in the testimony of Mr. Filbert, formerly Comptroller of the Steel Corporation and now Chairman of its Finance Committee. (R. 48, 49–52.)

> * * * Whenever a subsidiary desired to undertake a piece of work which involved a capital expenditure it submitted to the Corporation a form which was termed an appropriation request. That form was a communication addressed by the local officer or officers of the respective subsidiary, any individual subsidiary company, to the president of that company, indicating the probable amount of money that was desired to expend and the general purpose for which it would be expended. That form, if it met with the approval of the subsidiary's president, was so endorsed by him and submitted

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Finance Committee on April 19, 1932, the limit was reduced from $10,000 to $5,000. (Gov. Ex. K, R. 303.)

All purchases of land irrespective of amount must be approved either by the Finance Committee or by the President or Chairman of the Steel Corporation. (Gov. Ex. K, R. 303–304; R. 53.) Although prior approval is not required in the case of expenditures below the limit, the subsidiaries are required, even as to such expenditures, to make a report to the Steel Corporation. (R. 52, 97; Gov. Ex. K, R. 303.) And if it is desired to make an additional expenditure on an improvement project which did not require the approval of the Finance Committee because below the limit, it is necessary to obtain the approval of the Finance Committee for the additional expenditure if the amount thereof, together with the amount of the original expenditure, exceeds the limit. (Gov. Ex. K, R. 303.)

> to the Steel Corporation. * * * It was reviewed, looked over and presented to the Finance Committee of the Corporation. If the Finance Committee was agreeable to the making of that improvement it was endorsed with the recommendation of the Finance Committee. After the Finance Committee was through with it, it was sent back to the president of the subsidiary company. Then on the basis of receiving that advice the president proceeded with the work, making the expenditures approved. (R. 50.)

Instructions have been issued from time to time by the Steel Corporation to the subsidiary companies outlining in great detail the rules and procedure governing the subsidiary companies in the matter of expenditures for improvements. (Gov. Ex. K, R. 292–307; R. 50–51.) The practice commenced in 1908 and has continued to the present time. (R. 51.)

The importance of this requirement, as applied to the appellee, is shown by the fact that out of an annual average capital expenditure of approximately $900,000 during the years 1926 to 1930, inclusive, an average of over $600,000 per year required prior approval by the Steel Corporation. (Def. Ex. 27, R. 414.) In 1930 appellee made capital expenditures of $1,910,755.74, and of these $1,315,773.81 were in the class of expenditures for which the approval of the Steel Corporation was obtained. (*Ibid.*) The total capital expenditures

for the five years from 1926 to 1930, inclusive, amounted to $4,597,925.35, of which $3,153,817.36 were similarly in the class requiring approval by the Steel Corporation. (*Ibid.*) It is, of course, of no significance that there were more expenditures for improvements *in number* (but not in amount) made by appellee without first obtaining approval by the Steel Corporation. (See Def. Ex. 27, R. 414.) This would obviously be the case, but the significant fact is that all capital expenditures of any consequence required the approval of the Steel Corporation, and such expenditures during the five year period in question constituted nearly 70% of the total of capital expenditures.

Appellee sought to create the impression below that this requirement was not rigidly adhered to by the subsidiary companies (see R. 37), but Mr. Filbert could recall no specific instance during the past five years in which appellee or the other subsidiaries mentioned in this suit had made expenditures without obtaining approval, nor could he recall any instance in which they had ever acted in defiance of the refusal of the Steel Corporation to approve expenditures. (R. 52.) That the Steel Corporation expects this requirement to be rigidly complied with is not seriously open to dispute. (See Gov. Ex. D, R. 183.)[17] Nor is it material that

[17] This is a circular letter from the president of the Steel Corporation to all subsidiary presidents, sent on June 5, 1914, to Mr. Banks, president of appellee, stating: "It has

appellee's officers could recall no instance in which the Steel Corporation had refused to approve an expenditure requested by appellee. (R. 37, 97.) The significant fact is that the Steel Corporation requires its approval to be obtained, may reject or approve an expenditure, and insists on rigid adherence to its decision.[18]

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been recently remarked with emphasis by members of the Finance Committee that changes are made in regard to new work which increase the total cost above appropriation without previous consideration by the Finance Committee and even without notice to this office. *The rules for procedure have been heretofore stated, and the object of this letter is to call your attention to the necessity of complying rigidly with the instructions heretofore given.*" [Italics supplied.]

[18] There is considerable documentary evidence showing how in actual practice the matter of approval of capital expenditures was conducted as between appellee and the Steel Corporation. (See particularly Gov. Ex. D, R. 183, 186, 198–202, 204–205, 206, 209–210, 211–220, 223–224, 225–228.) Specimen "appropriation requests" are shown in Gov. Ex. T, R. 357–363. The form of these requests was originated in the office of the Comptroller of the Steel Corporation. (R. 51.) The attitude of appellee's president with respect to the procedure outlined by the Steel Corporation is sufficiently shown by his letter of January 28, 1926 (Gov. Ex. D, R. 199) in which he stated: "It is our desire to cooperate with you in this matter to the fullest extent, and if any future appropriations are not prepared in just the manner in which you desire, would appreciate it if you would call the matter to my attention, so that any errors may be promptly rectified."

A good example of the close supervision maintained by the Steel Corporation is found in the series of letters relating to the approval by the Finance Committee of the drilling of a well by appellee involving a relatively small out-

4. Control of surplus funds: the advance account

The "Advance Account" is the name of the account between the Steel Corporation and any of its subsidiaries showing the balance due to or from the Steel Corporation. (R. 54.) It represents mainly loans by the Steel Corporation to subsidiary companies who are in need of funds and the deposit by such companies with the Steel Corporation of surplus funds. (R. 54.) Appellee's Advance Account with the Steel Corporation has never shown a debit balance against appellee. (R. 72.)

The Steel Corporation pays 2½% interest on funds in this account (R. 68) and deposits the funds received from appellee for this account in its own banks along with its other funds used for the current requirements of the Steel Corporation or of its subsidiaries. (R. 66, 68.) During the period from 1920 to 1933 the funds which the Steel Corporation received from appellee as deposits in the Advance Account aggregated $79,000,000. (R. 71–72.)

When appellee desires to withdraw from this account it notifies the treasurer of the Steel Corporation that it will draw on a certain day for a certain purpose (R. 71) and thereafter a draft

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lay (Gov. Ex. D, R. 199–202, 208) and the approval by the Finance Committee of an additional expenditure for that project (Gov. Ex. D, R. 223–224, 225–226). See particularly the letter of January 16, 1928 (Gov. Ex. D, R. 200) and the telegrams of December 1 and December 2, 1931 (Gov. Ex. D, R. 225).

is drawn on the Steel Corporation (R. 71) and deposited for collection in appellee's bank. (R. 64–65.)

Appellee insisted in the court below that although the withdrawal was by draft which requires acceptance by the Steel Corporation, nevertheless the Advance Account was in practice a demand account subject to withdrawal without notice and without the consent of the Steel Corporation, and there was testimony to the effect that the money in this account is like an ordinary bank deposit and that the approval of the Steel Corporation was not required in order to obtain cash (R. 64–65), that drafts are paid promptly (R. 69), and that prior notification of the withdrawal was given to the Steel Corporation not because it was necessary but merely as a "matter of courtesy" (R. 72). But the Government's assertion that the funds in this account may be withdrawn only on the consent of the Steel Corporation does not rest merely upon the fact that the withdrawal is by draft which requires acceptance, but is shown by definite documentary evidence. On August 17, 1932, appellee's treasurer wrote to the treasurer of the Steel Corporation as follows: "In our August forecast, we have made provision for the withdrawal from our Advance Account of $100,000.00, which we believe at this time will be required some time during the latter part of this month. It is not our intention to with-

draw from our Advance Account the above amount or any part thereof unless occasion requires. Should we find it absolutely necessary to take this action, will you kindly advise whether we can have your approval of such withdrawal." (Gov. Ex. E, R. 259.) The reply was as follows: "It will be in order for you to draw $100,000.00 against your Advance Account if it is absolutely necessary." (Gov. Ex. E, R. 260.) In a letter of June 30, 1922, from appellee's assistant general auditor to its general auditor it was stated: "Nevertheless, I realize that as you state, this money is not 'free' cash as it is not subject to draft, without notification and consent." (Gov. Ex. E, R. 246.)

The deposits made by appellee in this account are sometimes made at the request of the Steel Corporation and sometimes voluntarily (R. 71–72). Of the total aggregate deposits of $79,000,000.00 during the years 1920 to 1933, $32,000,000.00 were made at the request of the Steel Corporation (R. 71–72). The frequency with which the Steel Corporation makes requests upon appellee for substantial deposits in this account is shown by the correspondence in Gov. Ex. E, R. 248–250. (See R. 66–68.) Thus on December 18, 1928, the treasurer of the Steel Corporation wrote to appellee's treasurer: "Please deposit to credit United States Steel Corporation in Continental National Bank and Trust Company two million dollars on or before Decem-

ber 24th. The amount will be credited to you in Advance Account." (Gov. Ex. E, R. 248.) See similar letters of June 29, 1929, calling for deposit of $500,000.00 on or before July 6, 1929 (Gov. Ex. E, R. 248); of August 21, 1929, calling for deposit of $1,000,000.00 on or before August 27, 1929 (Gov. Ex. E, R. 249); of September 16, 1929, calling for deposit of $1,000,000.00 on or before September 23, 1929 (Gov. Ex. E, R. 249); and of October 14, 1929, calling for deposit of $1,000,000.00 on or before October 21, 1929 (Gov. Ex. E, R. 249). Although the treasurer of the Steel Corporation testified that "there was nothing compelling about such requests" (R. 69), there was only one instance testified to in which such request was not honored and in that instance it appeared that appellee could not make the deposit because it had no excess cash. (R. 68, 70.)

5. Control of the clearing of inter-subsidiary transactions

In 1901 the Steel Corporation established and has since maintained the "United States Steel Corporation Clearance Account" by which monthly settlement is made of accounts arising between its various subsidiaries, including appellee. (Gov. Ex. E, R. 230–233; R. 53–54.) This account does not provide for settlement of freight charges or traffic claims due between appellee and the other subsidiaries, but it does provide for the settlement of all

other accounts. (R. 54.) The clearance account is handled in the office of the Steel Corporation under the direction of the Comptroller. (R. 54.) Interest is charged on debit or credit balances due in the clearance account and the rate of interest is decided very largely by the treasurer of the Steel Corporation. (R. 54.) The circular announcing the plan gave in detail the procedure to be followed by the subsidiaries and prescribed the forms to be used. (Gov. Ex. E, R. 230-233.) Among other things the circular stated: "It will be observed that under the foregoing plan all questions of discounts for settlement of accounts prior to a certain date (except in case of prepayment of ore contract instalments) are naturally eliminated, since no transfers of cash will be permissible in payment of accounts included in clearance balances except as provided." (Gov. Ex. E, R. 233.) Thus the appellee or any other subsidiary is precluded from obtaining such better terms for the settlement of accounts with other subsidiaries as might be possible under a condition of free bargaining.[19]

[19] Appellee stated in its brief below that its use of the clearance account was nominal. That this cannot be so is shown by the fact that appellee purchases practically exclusively from other subsidiaries such of its materials and supplies as are produced by them. (R. 73.) The documentary evidence shows that the settlement of the clearance account for the month of January, 1932, resulted in a balance due from appellee of $55,321.97. (Gov. Ex. E, R. 254.)

6. Bonus Plan, Pension Plan and Stock Purchase Plan

Bonus Plan.—The employees and officers of appellee participate in the same manner as all employees and officers of the Steel Corporation and of its other subsidiaries in a "Profit Sharing Plan" adopted in 1921 by the stockholders of the Steel Corporation (Gov. Ex. L, R. 309–321; R. 57–58). Under this plan, when the profits of the Steel Corporation exceed one hundred million dollars a certain percentage of the profits is set aside for distribution to the officers and employees of the Steel Corporation and its subsidiary companies who have performed unusual and meritorious service. (R. 58.) A committee elected by the stockholders of the Steel Corporation allots the fund among the employees of the Steel Corporation and of its subsidiaries.[20] (R. 58; Gov. Ex. L, R. 309–321; Gov.

[20]Appellee's suggestion that the Committee merely fixes the amount to be distributed to the various subsidiaries but does not designate the amounts to be paid to their employees is refuted by the documentary evidence. Thus in the letter dated February 4, 1931 from the Comptroller of the Steel Corporation to appellee's assistant auditor (Gov. Ex. I, R. 281–282) it was stated: "The amount fixed for your Company by the Committee of Stockholders having control of the distribution of the Fund for 1930, provided in accordance with the Profit Sharing Plan for employees, is $28,930. * * * As soon as allotment and distribution to individual employees are made we will send your President a detailed schedule of same." It will be noted that in this letter the Comptroller gave detailed instructions concerning the accounting entries to be made by appellee. In the circular

Ex. I, R. 281.) The Steel Corporation pays the entire amount of the fund to the Profit Sharing Committee and requests the subsidiary companies to remit the proportion of the fund allotted to them (R. 58; Gov. Ex. I, R. 281–282). It is to be noted that under this plan, the determination of whether bonuses should be paid depends not upon the earnings of a particular subsidiary but upon the joint earnings of all subsidiaries as reflected in the profits of the Steel Corporation, that the amount to be distributed by a subsidiary as a bonus to its employees is determined not by it but by a committee of the stockholders of the Steel Corporation, and that this committee even designates the par-

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which the Committee sent on February 9, 1926 to the officers and employees of the Steel Corporation and of its subsidiary companies (Gov. Ex. L, R. 311–312) it was stated: "As provided and authorized by the Plan, the Committee elected by the stockholders to administer the same has designated the employees of the Corporation and its subsidiary companies qualifying for participation in the Fund and has allotted the amount of the Fund to such designated employees in the manner provided by the Plan. * * * all questions relating to the interests, rights, and claims of any officer or employee in, or growing out of, the proposed distributions and fund above specified shall be finally determined and disposed of in its discretion by the Committee of Stockholders of the United States Steel Corporation, elected from time to time to administer the Profit Sharing Plan, as said Committee may be constituted when and as any questions arise." Substantially the same statements appear in the circulars sent out February 2, 1924, February 3, 1925, February 8, 1927, February 14, 1928, February 5, 1929, February 4, 1930, and February 3, 1931 (Gov. Ex. L, R. 307–321).

ticular employees of a subsidiary to whom bonuses should be paid.

Pension Plan.—All employees of the Steel Corporation and of the subsidiaries which it controls participate in the same manner and under the same regulations in the benefits of the "United States Steel and Carnegie Pension Fund", which is a Pennsylvania corporation created in 1910 and to which $8,000,000 was contributed by the Steel Corporation and $4,000,000 by the trustees of the Andrew Carnegie Pension Fund. (Gov. Ex. Q, R. 348–354; R. 56–57, 59.) When the income from this fund is insufficient to meet the pensions the Steel Corporation advances to the pension fund on behalf of its subsidiaries the amount of the deficit and renders semi-annually a charge account against each of the subsidiary companies for its proportion of the deficit. (R. 56–57; Gov. Ex. G, R. 276.) The general plan for entering on the books of the subsidiaries the amounts expended for pensions was outlined by the Comptroller of the Steel Corporation. (R 57; Gov. Ex. G, R. 274–276, 277–278.) The fact that appellee's president determines what employees are to be retired on pension (R. 59) is obviously of no significance, since the pension rules of the "United States Steel and Carnegie Pension Fund" (Gov. Ex. Q, R. 348–354) prescribe in detail the circumstances under which pensions may be obtained, the amount of the pensions and the procedure for obtaining them.

Stock Purchase Plan.—The employees and officers of appellee participate in the same manner as officers and employees of the Steel Corporation and of the producing subsidiaries in a plan under which such officers and employees are accorded the privilege of purchasing common stock of the Steel Corporation below its market price in proportion to the salary of the particular officer or employee. (R. 7, 19.) This plan provides for deferred payment for the stock, the Steel Corporation retaining custody thereof until the purchase price is fully paid. (R. 7, 19.) If an officer or employee leaves the employ of the Steel Corporation or of the subsidiary before completing payment for stock so purchased he loses his right to such purchase. (R. 7, 19.) In such a case the officer or employee is reimbursed for the amounts paid in by him plus interest at 5% and the stock is retained by the Steel Corporation. (R. 7, 19.)

7. Reports, budget estimates, inter-subsidiary purchases, and bank accounts

Reports.—The Steel Corporation maintains an elaborate system of reports from its subsidiaries. The subsidiaries render daily or weekly reports of their bank balances. (R. 55.) They report all expenditures for capital purposes, whether above or below $5,000.00. (R. 52–53.) In the case of purchases or contracts for capital account in the amount of $1,000.00 (previously $500.00) or over,

the subsidiaries file with the Steel Corporation copies of the contracts and of the bids made.[21] (Gov. Ex. D, R. 182, 184, 189–191, 191–192, 196, 222–223.) The subsidiaries render weekly and quarterly reports of purchases made from outside companies. (R. 72–73; Gov. Ex. J, R. 287–291.) The subsidiaries submit quarterly reports showing the estimated amounts which they will expend during the succeeding five or six months for capital expenditures already approved. (R. 53; Gov. Ex. D, R. 203–204.)

Budget estimates.—Until as late as the end of 1931 the Steel Corporation obtained from its subsidiaries "budget estimates", consisting of a statement of the expenditures for betterments and improvements contemplated for the ensuing year, and an estimate of such expenditures for two years thereafter. (R. 53; Gov. Ex. D, R. 204, 205–206, 207–208, 209, 218, 220–221, 223, 224–225.) This practice has been abandoned during the past three years, apparently because of the depression. (R. 53.)

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[21] It would appear from the letter of January 14, 1924, in Gov. Ex. J, R. 290, that at least when that letter was written, this data was filed also as to purchases or contracts amounting to $1,000.00 or over, although not made under appropriations, that is, not for capital account. On March 25, 1924, the limit was increased to $10,000.00 in the case of such non-capital expenditures. (Gov. Ex. D, R. 197.)

See also Gov. Ex. D, R. 197–198 (monthly reports of expenditures); and Gov. Ex. D, R. 193–194.

Inter-subsidiary purchases.—Appellee purchases practically exclusively from the Steel Corporation subsidiaries such of its materials and supplies as are produced by them.[22] (R. 73.) As previously

[22] In a letter of April 25, 1917 to Mr. Farrell, president of the Steel Corporation, Mr. Banks, appellee's president, stated (Gov. Ex. J, R. 286):

"We sell all of our scrap to the Illinois Steel Company, and that Company fixes the price that they will pay for the scrap. It is based on the price shown in the Iron Age Review for the week shipments are made. However, that does not apply to our rails. We could sell our rails to outsiders at a higher price than paid us by the Illinois Steel Company. We are, therefore, so far as our Company is concerned, placed at a disadvantage. We have no means of making a saving either in our sales or purchases."

At the trial Mr. Banks repudiated these statements. (R. 101–103, 103–104.)

In view of the importance of coal purchases to a railroad company, the evidence concerning such purchases is of particular interest. Appellee's purchasing agent testified (R. 73) that appellee purchases all of its coal from United States Fuel Company, one of the Steel Corporation subsidiaries, and that: "As to how the price we pay for the coal is determined: The invoice price is the published price shown in the Quarterly report. Government Exhibit N is recognized as the Quarterly Price Report inter-company prices. I have that at my disposal at all times. It is issued quarterly, each quarter. In a general sense it is published by the United States Steel Corporation." He said (R. 73) that it is an advantage to appellee "in having coal of one type continuously instead of alternating with different types of coal", and that the prices paid the Fuel Company would probably be comparable with prices of outside mines. (Appellee introduced a comparison of cost of coal purchased by it during 1917 from United States Fuel Company with estimated cost of coal from outside companies, Def. Exs. 28, 29, 30, R. 415–416.) Speaking of United States Fuel Company the wit-

stated, appellee makes a weekly and quarterly report of all purchases made from outside companies. (R. 72; Gov. Ex. J, R. 287–291.) The purchases by the producing subsidiaries from outside companies are supervised by the Purchasing Agents' Committee of the Steel Corporation,

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ness said (R. 100): "There is no other company that we have any interest in down in that region" (Danville District, Illinois). During the period 1926 to 1930, inclusive, appellee spent, annually, from $1,516,732.83 to $1,027,806.69 for coal purchased from United States Fuel Company (Gov. Ex. W, R. 364). On two occasions appellee purchased coal on "bids": First, during Government control of railroads in 1919, at the direction of the Regional Purchasing Committee, the head of which Committee was in no way connected with appellee (R. 74; Def. Exs. 3 and 4, R. 400–402), and, second, "during the strike of two years ago."

Contrast the correspondence in Gov. Ex. J, R. 283–287, with appellee's affirmative allegation (R. 16) that "in all its affairs * * * it is as free and independent as any railroad company is free and independent of its stockholders": The Steel Corporation's Vice President wrote Mr. Banks, Oct. 21, 1914: "We think it very important that purchases of all grades of coal on the outside be kept at a minimum." (R. 283.) Mr. Banks replied, Oct. 23, 1914, that, while appellee had previously bought some outside coal (R. 283–4), "We are not buying any coal from any outside parties and are confining all of our purchases to the Bunsen Coal Company" [a subsidiary of the Steel Corporation, R. 103]. The Steel Corporation's Vice President again wrote Mr. Banks, Oct. 21, 1915 (R. 284): "As you probably know, operations at Bunsen Coal Company have been curtailed recently, and we think the question of shutting off shipments of coal from outside mines should be gone into carefully, and *where it is to the Corporation's interest* to take coal from the Bunsen Coal Company it should be done." (Italics supplied.) Mr. Banks replied Oct. 25, 1915, that appellee's purchase of coal from outside mines "was discontinued September 30th."

which consists of representatives of the various producing subsidiaries. (R. 70.) The function of that committee is also to secure information on purchases made from all subsidiaries of the Steel Corporation. (R. 70.) No officials of appellee are on the committee at the present time, although they

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(R. 284.) On April 21, 1917, appellee received an invoice from the United States Fuel Company for coal from March 27 to April 7, which showed an advance of 58 cents per ton over previous prices, whereupon Mr. Banks wrote the President of the Steel Corporation concerning this advance (R. 285), saying: "The first intimation we had was the rendering of the bill. This advance in fuel will cost the E. J. & E. road between $350,000 and $400,000 a year." Upon receipt of the reply of the President of the Steel Corporation, stating that the price charged was that named in the inter-company price list, which he believed to be lower than market prices (R. 285), Mr. Banks again wrote (R. 286) the President of the Steel Corporation, April 25, 1917, that appellee had not received the price list and was "only advised of changes in the price of coal when we receive the invoice. Everything purchased by the E. J. & E. Ry. Co. from any of the Subsidiary Companies (and we make no purchases outside of any material that can be supplied by Subsidiary Companies) we have to pay whatever price is marked on the invoice, and it is the market price at the time of shipment."

To this, the President of the Steel Corporation replied, May 14, 1917 (R. 286–287), explaining the reasons for the increased price, and saying: "It is appreciated this advance in price will increase your operating expenses. But this is also true of many of your other supplies and expenses. It is something every railroad is facing under prevailing conditions. We have written you in detail on this matter, desiring to present a complete exposition of the situation in order that you may fully understand the price in question was arrived at from a full and fair consideration of the interest of all parties concerned."

have attended in the past. (R. 70.) See also Inter-Company Price List governing raw material purchases (with some exceptions) between the producing subsidiaries. (Gov. Ex. N, R. 334–340.)

Bank accounts of subsidiaries.—Whenever a subsidiary wishes to open a new account at any bank it proposes to the Steel Corporation the name of the bank and obtains its advice as to whether it is a safe depository. (R. 55.) Mr. Filbert could recall no instance in which any subsidiary failed to follow the advice of the Steel Corporation. (R. 55.) As previously stated, the Steel Corporation is kept advised by daily or weekly reports of the balances in the bank accounts of the subsidiaries. (R. 55.) On June 10, 1932 the treasurer of the Steel Corporation advised appellee's treasurer that "we are making up a new list of the depositories of the Corporation and its subsidiary companies" and enclosed a blank form for that purpose, requesting that there be entered "in the specified columns the purpose for which the account is used and the rate of interest allowed." (Gov. Ex. E, R. 257–258, and see reply, Gov. Ex. E, R. 258.)

The record discloses various other matters, not considered under the previous headings, which illustrate the extent to which the Steel Corporation in practice supervises the affairs of appellee. See particularly, Gov. Ex. E, R. 235–236, 236, 237, 237–238, 240–241, 241–244, 247–248, 250–251; Gov. Ex. D, R. 185–186, 186, 192–193, 193, 194, 195, 195–196, 227–229.

8. Trackage agreement with the Chicago and Eastern Illinois Railroad Company

The Lake Shore Road (or its predecessor) had a trackage agreement with the Chicago and Eastern Illinois Railroad Company (hereinafter called Chicago and Eastern) before the formation of the Steel Corporation. (R. 30.) On February 1, 1909, a renewal was made of the prior agreement for a term of 50 years. (R. 46; Gov. Ex. Y, R. 389.) The trackage agreement gave the Lake Shore the right to run its freight trains over the tracks of the Chicago and Eastern to reach mines and quarries owned or controlled by subsidiaries of the Steel Corporation and to haul freight from those mines consigned to subsidiaries of the Steel Corporation. (R. 30–31.) Appellee succeeded to these trackage rights upon its lease on June 1, 1909 of the Lake Shore Road. (R. 31.) In substance, therefore, appellee acts as a private carrier for the subsidiaries of the Steel Corporation with respect to the freight which it hauls over the lines of the Chicago and Eastern under the trackage agreement. (See Gov. Ex. C, R. 157–158; Gov. Ex. Y, R. 393.)

This trackage agreement is significant because it gives concrete illustration of a particular kind of advantage which the ownership by shipping interests of a railroad may afford to such interests as compared with competitive shippers. To be sure, the subsidiaries of the Steel Corporation pay the same published rates to appellee for the haul over

the line of the Chicago and Eastern as other shippers pay to the Chicago and Eastern for a similar haul. But, of course, the revenues received by appellee ultimately are received by the United States Steel Corporation in the form of dividends. By virtue of the trackage agreement it is unnecessary for appellee to divide rates with the Chicago and Eastern. It is required simply to pay a rental. To the extent that the divisions which would otherwise have been payable to the Chicago and Eastern exceed the sum of the amount of the rental plus the cost to appellee of operating its trains over the tracks of the Chicago and Eastern, the Steel Corporation or its subsidiaries receive an advantage over their competitors just as surely as if they were charged a lesser rate for the haul. That the advantage was not merely a speculative one in this case is indicated by a memorandum obtained from the files of appellee (R. 26) which shows that based on operations from July to November, 1921 appellee would lose $310,000.00 every six months if the trackage agreement was discontinued and the Chicago and Eastern became entitled to divisions for the haul over its line. (Gov. Ex. C, R. 167–171.)[23]

[23] This memorandum shows that the revenues for the five month period in question would be reduced from $1,582,689.21 to $632,925.87 and that the expenses would be reduced from $821,798.23 to $131,187.42, making a net loss for the five months' period of $259,152.53. (Gov. Ex. C, R. 171.) The record shows that this memorandum was obtained from the files of appellee. (R. 26.)

Without its ownership of a railroad the United States Steel Corporation would be in no position to obtain such an exceptional advantage. To enter into a contract directly with the Chicago and Eastern for a lesser rate than charged to other shippers would constitute an unlawful preference. But by the use of a subsidiary railroad the appearance of preference is avoided, since the same rate is paid by the subsidiary producing companies to the subsidiary railroad as other shippers are charged by the Chicago and Eastern. Thus Mr. Banks, appellee's president for many years, testified in response to the inquiry as to whether the subsidiary manufacturing companies received any benefits by reason of the trackage agreement: "They paid the same freight rates, practically the same freight rates on shipments moving in our trains over our railroad to their plant as they would have paid if somebody else had hauled it from the same point." (R. 31.) This is true, but, of course, the amount paid by one subsidiary of the Steel Corporation to another subsidiary is merely a matter of bookkeeping. It is utterly without bearing upon the question as to whether real equality exists between the Steel Corporation and its competitors, that is to say, whether their actual transportation costs are equal.

In view of the importance to the Steel Corporation of this trackage agreement it is not surprising to find Judge Gary, chairman of the board, taking

an active part in the negotiations which resulted in 1920 to 1922 from the demand of the Receiver for the Chicago and Eastern for an increased rental. (Gov. Ex. C, R. 159–179.) The Receiver (then acting in the interest of the new company of which he was to become president) was in a position to make such a demand by reason of a provision in the foreclosure decree which enabled the purchaser at foreclosure to reject any contract made by the Chicago and Eastern. (Gov. Ex. C, R. 163.)

Mr. Banks took the matter up with Judge Gary in the latter's office on December 20, 1920, and was authorized by him to offer the Chicago and Eastern an additional 1¢ per ton. (Gov. Ex. C, R. 160, 161; R. 32.) This was unacceptable to the Receiver (Gov. Ex. C, R. 161–162), and it was thereupon decided to procure an option for trackage rights over the Chicago, Terre Haute and Southeastern Railroad. (R. 32; Gov. Ex. C, R. 161.) Mr. Banks testified that he first suggested that an option be obtained from the Chicago, Terre Haute and Southeastern, but that Judge Gary "may have suggested that I get an option so as to make it binding by paying a sum for it." (R. 32.) Mr. Banks' memorandum of the conference held on April 21, 1921, with Judge Gary reads as follows (Gov. Ex. C, R. 161):

> Judge Gary said in his office 4/21/21: Get Option for a contract for trackage over

C. T. H. & S. E. Ry., pay for option. Have K. K. Knapp draw it and then you will be in position to talk to C. & E. I. R. R.
AFB.

Mr. Banks gave full reports to Judge Gary of the course of negotiations with the Receiver and with the Chicago, Terre Haute and Southeastern [24] (Gov. Ex. C, R. 162–165, 171–175, 177–178) and Judge Gary participated in some of the conferences. (Gov. Ex. C, R. 173, 177.) It was doubtless a matter of grave concern to the Chicago and Eastern that if the trackage agreement was terminated it might lose to other carriers a large volume of traffic which it handled for various subsidiaries of the Steel Corporation. Thus on June 28, 1922, Mr. Banks wrote to Mr. Shearson, a director of the Chicago and Eastern, in response to an inquiry as to the amount of business received by the Chicago and Eastern from subsidiaries of the Steel Corporation (R. 32–33; Gov. Ex. C, R. 175–176), that the earnings of the Chicago and Eastern from United States Steel subsidiaries during the year 1921 amounted to over $1,300,-

[24] On February 6, 1922 Mr. Banks wrote to Judge Gary:
"Personally I feel that Mr. Byram [President of the Chicago, Milwaukee & St. Paul, of which the C. T. H. & S. E. was a subsidiary, R. 32] believes that we will not make use of the proposed option to operate over his line, that the C. & E. I. will not allow us to leave their road, but that if he is to give us an option, he wants something in return, and that is the right for the unrestricted use of our road between Joliet and Aurora." (Gov. Ex. C, R. 175.)

000.00, exclusive of the rental paid by appellee under the trackage agreement, and that (Gov. Ex. C, R. 176):

> The Steel Corporation through its various subsidiary companies contribute quite a bit to the gross earnings of the C. & E. I. Road, and I think you will quite agree with me that the Corporation's traffic is very desirable business, and it is in my mind a worth while saving, this tonnage and earnings to the C. & E. I. R. R. By far the larger part of this tonnage is competitive.

In the end, Mr. Banks proposed to compromise the matter with the Chicago and Eastern by offering an additional 2¢ per ton, "an increase of a little less than 20% over our present contract," if "my recommendation is acceptable to you [Judge Gary] and you approve it." (Gov. Ex. C, R. 177–178.) Judge Gary gave his approval (Gov. Ex. C, R. 178), and on October 18 and 20, 1922, the compromise was effected by an exchange of letters between Mr. Banks and the president of the Chicago and Eastern. (Gov. Ex. C, R. 178–179.) Judge Gary subsequently wrote to Mr. Banks that he believed that the directors of the appellee should approve and ratify the arrangements made (Gov. Ex. C, R. 179) and two months later the directors so acted. (Def. Ex. 2, R. 399.)

9. Lease of Lake Shore and Eastern Railway Company

By lease dated June 1, 1909, effective for 60 years, appellee acquired and operates all of the railroad properties of the Chicago Lake Shore and Eastern Railway Company, hereinafter called Lake Shore. (Gov. Ex. X, R. 365–376.) The lease was amended December 1, 1913, and again December 21, 1917. (Gov. Ex. X2 and X3, R. 376–388.) The documentary evidence relating to the consummation of this lease and of its subsequent amendments is voluminous. (Gov. Ex. B, R. 132–157.) This evidence is of the utmost significance in this case because it is another actual example of how the interest of the United States Steel Corporation as a shipper has operated in the past, and may continue to operate in the future, as the dominant factor in the conduct of the affairs of its subsidiary railroads in direct violation of the purpose of the Commodities Clause. It is also a striking i. ıstration of the active part taken by officials of the Steel Corporation in negotiations carried on by appellee. The Government, therefore, deems it essential to present to the Court a rather full analysis of this evidence.

The capital stock of the Lake Shore was and is owned by the Illinois Steel Company, one of the subsidiaries of the Steel Corporation. (R. 4, 15, 28, 66.) It served "practically one industry, the Illinois Steel Company." (Gov. Ex. B, R. 135.)

It had "a short haul of about eleven miles on the larger portion of traffic received from connecting lines" from which it obtained divisions. (Gov. Ex. B, R. 141.) Appellee, on the other hand, prior to its lease of the Lake Shore, received 75% of its business from the general public and only 25% from the Steel Corporation's subsidiaries. (Gov. Ex. B, R. 136.)[25]

The evidence establishes beyond doubt that the controlling purpose motivating the lease to appellee of the Lake Shore Road was to prevent the loss under governmental regulation of the divisions which the Lake Shore was receiving from connecting lines. The Interstate Commerce Commission had made an investigation and on November 3, 1904 had rendered a report entitled "In the Matter of Divisions of Joint Rates and other Allowances to Terminal Railroads," 10 I. C. C. 385, in which it dealt, among other things, with the relations between the Illinois Steel Company, the Lake Shore and the Steel Corporation and condemned as excessive the divisions which the Lake Shore received from connecting lines.[26] It was feared that under

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[25] In fact, over one-half of this 25% was received by appellee even before the formation of the Steel Corporation or of the Federal Steel Company. (Gov. Ex. B, R. 134.)

[26] "We are of the opinion in this case, * * * that the only service for which the railways transporting the traffic of the Illinois Steel Company to and from Chicago can properly charge is the switching service to and from the plants of that Company; that the divisions in question are much in excess of any fair charge for that service; that they

existing or new legislation the Lake Shore would be held to be entitled not to divisions, but only to a small switching fee. The practical effect of the loss of these divisions would, of course, be to increase the transportation costs of the Illinois Steel Company.

On July 20, 1905, Mr. Banks (president of both the Lake Shore and appellee) wrote to Judge Gary, chairman of the board of directors of the Steel Corporation, strongly advising the acquisition or lease by appellee of the Lake Shore (R. 27–28; Gov. Ex. B, R. 132). He wrote that since the appellee's business is that of a common carrier with 75% of its business derived from shippers other than the Steel Corporation or its subsidiaries, "the Interstate Commerce Commission could not take the position [if appellee should acquire or lease the Lake Shore] that the E., J. & E. Road served only the Illinois Steel Company, and was, therefore, only a terminal road organized for the purpose of securing larger divisions, which is another name for rebates. Besides, the earnings of the C., L. S. & E. Ry. Co., when spread over the

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are intended and understood to be in excess of what would be a reasonable charge; that they are, in fact, paid to secure the traffic of the Illinois Steel Company; and that they do, in fact, amount to a preference in favor of that Company by whatever amount they exceed a fair compensation for the service rendered. What that amount is cannot be determined upon this record; it is clear that it annually aggregates what to the ordinary apprehension is an enormous sum." (10 I. C. C. 385, 398.)

total mileage of the two roads, would not show up so abnormally large." (Gov. Ex. B, R. 132.) He believed "that it would be the best thing *for the Corporation*[27] to have" appellee purchase or lease the Lake Shore. (Gov. Ex. B, R. 132.) He stated that "any interest that the Illinois Steel Company has in the C., L. S. & E. is simply a question of bookkeeping * * *. Any profits made one way or the other *for the Corporation as a whole,* and how it should be distributed, is a matter that can be determined upon *by the Corporation;* so long as we keep our profits at home, *the Corporation is not the loser.*" (Gov. Ex. B, R. 132.)

On October 18, 1905, Mr. Banks again wrote to Judge Gary urging the lease by appellee of the Lake Shore Road (Gov. Ex. B, R. 133–134). He felt that the Lake Shore "will again be attacked by the Interstate Commerce Commission on the ground of its being a purely Terminal or Switching Road" and he believed "it to be to the best interests *of the Corporation*" that a lease should be made. (Gov. Ex. B, R. 133.) He stated that in his opinion a lease would "stop all further talk or action against the C., L. S. & E. Ry. for being a strictly industrial railroad, as the E., J. & E. Ry. today derives seventy-five per cent of its earnings from business other than that of the constituent companies of the Corporation, and over half of the 25% of the business which the E., J. & E. handles

[27] Italics supplied unless otherwise indicated.

for constituent companies of the United States Steel Corporation, is business that the E., J. & E. Railroad enjoyed before the formation of the United States Steel Corporation or the formation of the Federal Steel Company." (Gov. Ex. B, R. 134.) He noted that "all of the Eastern Roads are making a very determined fight to eliminate divisions with so-called industrial roads and terminal roads, giving them in lieu of divisions, a nominal switching charge." (Gov. Ex. B, R. 134.) Concerning the basis upon which the lease could be made, he stated that "the U. S. Steel Corporation being owners of both properties, this matter could easily be arranged, and I believe if the lease was made we can materially reduce the operating costs of the Illinois Steel Company by reducing the rates between Buffington and South Chicago, rates that we now hold at a rather high figure in order to maintain our divisions that we exact from our connections, a matter that you are thoroughly familiar with, as it was talked over very fully between you, Mr. Knapp and myself when the subject of coke divisions was under consideration." (Gov. Ex. B, R. 134.) He asked Judge Gary to consider his suggestion and advise if he did not "now think it advisable to arrange to bring the two Roads together." (Gov. Ex. B, R. 134.)

Judge Gary replied on October 20, 1905, that "if you can get Mr. Knapp's opinion that from a legal standpoint the lease should be made, and you and

Mr. Buffington then agree, *I shall be glad to take up the whole question for final disposition.*" (Gov. Ex. B, R. 135.)

On December 28, 1905, Mr Banks again wrote at length to Judge Gary. (Gov. Ex. B, R. 135–137.) He stated that "after reading the President's message to Congress" he was "more firmly convinced than ever of the urgent necessity of putting these two properties together." (Gov. Ex. B, R. 135.) He was of the opinion that "Congress will undoubtedly pass a law giving greater authority to the Interstate Commerce Commission, as special mention was made by the President in reference to Terminal and so-called Industrial Roads." (Gov. Ex. B, R. 135.) "It is unfortunate," he wrote, that the Lake Shore "serves practically one industry, the Illinois Steel Company * * *. The question of allowances to Terminal Railroads will not down, and if other so-called Industrial Railroads will accept switching charge of $2.00 or $3.00 per car for services practically identical with that performed by the C., L. S. & E. Ry. then it is only a question of time (and a short time at that), when the C., L. S. & E. Ry. is forced to give up its divisions and accept a nominal switching charge for its service." (Gov. Ex. B, R. 135–136.) He believed that "*the Corporation will be benefited, as a whole*", by the lease and that while it "will, undoubtedly, prove a hardship to the Illinois Steel Company", it was better in his opinion

"that the Illinois Steel Company, as a constituent company should suffer some loss and the Corporation benefit by the same, than to have the Illinois Steel Company suffer a loss and the Corporation not benefit by the same." [28] (Gov. Ex. B, R. 135.) He asked Judge Gary for "an early reply from you as to your wishes in this matter." (Gov. Ex. B, R. 137.)

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[28] It is of interest to note Mr. Banks' comment on the suggestion which had been made that the Illinois Steel Company should acquire the capital stock of appellee, "thus reducing the manufacturing cost of the Illinois Steel Company by taking up the profits" of appellee: "I do not believe that would be policy, and for this reason: 75% of the present business of the E., J. & E. Road is derived from business other than that of the Corporation. I mean by that, that 75% of the present earnings of the E., J. E. Ry. is received on its local business and its through business that has no connection in any shape or manner with the business of the United States Steel Corporation. If it were known, and, of course, it would be known, that the Illinois Steel Company was the owner of the E., J. E. Road, we would be placed in the position of being attacked by every shipper over the E., J. & E. Ry., with discriminating in our cars and service in favor of the Illinois Steel Company. That charge has recently been made to me by the Coal Operators on the E., J. & E. Road, who stated that prior to the formation of the Federal Steel Company, they were at all times amply supplied with E., J. & E. equipment for their coal mines; that since the formation of the Federal Steel Company, that the Illinois Steel Company has had the first call on E., J. & E. equipment and that their mines have not been supplied with cars. *Unfortunately this is true to a certain extent, as we have endeavored at all times to take care of the constituent companies of the Corporation in supplying them with cars.*" [Italics supplied.] (Gov. Ex. B, R. 136.)

After conferring with Mr. Banks and Mr. Knapp, Mr. Buffington, president of the Illinois Steel Company, wrote to Judge Gary that they had concluded to recommend the lease "in the light of recent developments concerning railroad matters." (Gov. Ex. B, R. 137.) He stated that Mr. Knapp was of the opinion that the lease "will tend towards safeguarding the freight divisions, now being allowed the C., L. S. & E. Ry. by its connecting lines against a reduction of such divisions under some possible application of the Interstate Commerce Laws," and that these divisions "constitute a large part of the earn[illegible] the C., L. S. & E., and of course should be safeguarded to the furtherest extent." (Gov. Ex. B, R. 137–138.) Mr. Knapp, he wrote, would submit for Judge Gary's "consideration a definite plan for carrying out the suggestion" (Gov. Ex. B, R. 138).

On January 3, 1906, Judge Gary wrote to Mr. Banks suggesting that he have a form of lease drawn and sent to Judge Gary for consideration. (Gov. Ex. B, R. 138.)

Judge Gary had apparently asked Mr. Filbert, Comptroller of the Steel Corporation, to submit his views on the proposed lease, for on October 15, 1907, he wrote to Judge Gary outlining in detail a number of questions respecting the advantages to be derived from the lease and the manner in which it would affect the Illinois Steel Company. (Gov. Ex.

B, R. 139–141.) He also made specific suggestions concerning certain provisions in the lease dealing, among other things, with the amount of rental and with the charges which should be made as between the two roads, for improvements and extensions. (Gov. Ex. B, R. 140–141.)

Mr. Banks wrote to Judge Gary on December 3, 1907, giving an elaborate reply to the questions raised by Mr. Filbert. (Gov. Ex. B, R. 141–146.) He discussed again the danger which would confront the Lake Shore, if it remained a separate property, of being deprived of its divisions upon the theory that it was a terminal road handling only the freight business of the Illinois Steel Company, and he outlined the arguments which appellee could make to defend its claim to such divisions if the lease were made. (Gov. Ex. B, R. 141–143.) He felt that it was "only a question of a short time" before the connections of the Lake Shore would urge to the Interstate Commerce Commission that the Lake Shore be given only a switching rate instead of divisions. (Gov. Ex. B, R. 143.) He wrote: "If that is done, *it will mean a very great loss to the Corporation.*" (*Ibid.*) His discussion of how the Illinois Steel Company would be affected by the lease as respects manufacturing and transportation costs (Gov. Ex. B, R. 143–145) strikingly illustrates the many ways in which the interests of the Illinois Steel Company, as a ship-

per, were irresistibly drawn into the consideration of the proposed lease.[29] Mr. Banks also discussed the terms of the lease and expressed his agreement with certain modifications which Mr. Filbert had suggested. (Gov. Ex. B, R. 145–146.) The lease was finally executed as of June 1, 1909. (Gov. Ex. X, R. 365–376.)

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[29] Note particularly the following:

"I believe that we could make a less rate on iron ore from South Chicago to Joliet than we now have, and could do that by agreement with other Railroads who handle no iron ore. As to reduced rates on other commodities, I do not believe we could make any reduction, for the reason we must charge the same rates between South Chicago and Joliet as the Chicago & Alton, Santa Fe, and Rock Island are charging between Chicago and Joliet. *The Steel Corporation must not, by its own road, put in rates for its own constituent companies that serve to reduce the rates of other Railroads on shipments made by its patrons and competitors of the Steel Company.* In other words, we must assist our competing railroads to get reasonable compensation for their service from outside parties, and to do this, we must charge reasonable rates for handling the business of our constituent companies." [Italics supplied.] (Gov. Ex. B, R. 145.)

Mr. Filbert replied on December 28, 1907:

"It is unfortunate you cannot see your way clear to make lower rates between South and Joliet on commodities other than ore. Still, as long as the Steel Company would, under the new deal, be giving up as a manufacturing proposition the benefit which accrues to it in other directions, and which in amount is largely in excess of the South-Joliet business, I suppose the loss of this latter would not be large, comparatively. *After all the crux of the matter, in my mind, is in the first problem you touch on. 'What advantages would accrue from the standpoint of traffic relations with connecting trunk lines.'* And that is too deep and complex a question for me to grasp." [Italics supplied.] (Gov. Ex. B, R. 147.)

Appellee soon discovered that the rental [30] which it was required to pay under the lease worked "a great hardship" upon it. (Gov. Ex. B, R. 147–148.) Mr. Banks wrote to Mr. Filbert on September 18, 1912, complaining that the burden upon appellee was so great as to preclude it "from earning much if anything for additions and improvements," since before it "gets anything for additions and improvements, it must earn at least $1,630,000.00 over and above the bond charges of the E., J. & E. and the C., L. S. & E. Roads, and then for every $100,000.00 it earns in excess of this $1,630,000.00, it receives only $35,000.00." (Gov. Ex. B, R. 148.) He stated: "I will admit that under the common ownership of the stock of these railroads, * * * it is immaterial through what channels the earnings of the railroad property should arrive in the treasury of the United States Steel Corporation." (Gov. Ex. B, R. 149.) Nevertheless, he felt that the burden upon appellee

[30] Under the lease appellee was obligated, after paying a 4% dividend ($400,000.00) on its stock, to pay to the Lake Shore: (1) $600,000.00; (2) an amount equal to 7% ($630,000.00) on the Lake Shore capital stock, both of these obligations being cumulative, i. e., payable in succeeding years if not paid in any year; and (3) 18/28 of the remainder of appellee's surplus earnings. (Gov. Ex. X, R. 369–370, 375–376; Gov. Ex. B, R. 147–148, 152–153.) Mr. Banks stated that the lease "to all intents and purposes limits the earnings of the E., J. & E. Road to 4% upon its capital stock", whereas for a number of years prior to the lease appellee "showed its ability to earn its fixed charges and more than 4% on its capital stock." (Gov. Ex. B, R. 148.)

should be lessened, and he proposed certain amendments to the lease, requesting Mr. Filbert "to give the matter your careful consideration so that when Judge Gary returns home you and I can take the matter up with him to see if it meets with his approval." (Gov. Ex. B, R. 149–150.)

Mr. Filbert suggested that Mr. Banks first take the matter up with Mr. Buffington, president of the Illinois Steel Company, so as to be able to present to Judge Gary "a joint recommendation" which, he felt, "would greatly facilitate *a decision on Judge Gary's part.*" (Gov. Ex. B, R. 150.) Mr. Banks again wrote to Mr. Filbert on January 22, 1914: "I would like to get this matter settled. The present lease is such a burden upon the E., J. & E. Road that I feel it extremely unfair, and I feel sure that Judge Gary does not want either one of the properties to have anything that isn't fair." (Gov. Ex. B, R. 150–151.) Mr. Filbert replied that he would prepare certain figures for presentation to Judge Gary and stated that he presumed that Judge Gary "*before finally rendering a decision*" would hold a conference with Mr. Banks and Mr. Buffington. (Gov. Ex. B, R. 151.)

Mr. Banks submitted to Mr. Filbert on June 9, 1914, an elaborate analysis of the disposition of appellee's earnings since the date of the lease, showing the disproportionate amount of earnings paid to the Lake Shore as compared with those retained by appellee. (Gov. Ex. B, R. 152–154.) In the

course of demonstrating that this was unfair because it did not permit appellee "to make any improvements, additions, or betterments to its property out of its earnings," he pointed out that appellee has about 140 miles of track to maintain within the Gary Plant of the Illinois Steel Company, costing more per mile to maintain than appellee's main line, and that although the Illinois Steel Company contributes nothing to their maintenance, many of such tracks are used exclusively [31] by the engines of the Illinois Steel Company which "operates as many or more switch engines within the Gary Plant" than appellee. (Gov. Ex. B, R.

[31] Contrast with this, appellee's practice with respect to industrial tracks maintained for independent shippers. While appellee will furnish tracks for industrial purposes to any industry located on its line where in its opinion "the business of the industry will warrant the construction and maintenance of those tracks" (R. 91), appellee retains for itself the exclusive use of such tracks for any purpose. (R. 76, 91.) A vice president of appellee testified that it was still true that the Illinois Steel Company uses the tracks maintained by appellee, though "not necessarily exclusively." (R. 94.)

Appellee has approximately 270 miles of industrial tracks serving the Illinois Steel Company plants at Joliet, Gary and South Chicago, nearly all of which are located off the appellee's property (Gov. Ex. O, p. 1) and within the plants of the Illinois Steel Company (Def. Ex. 21, R. 412). The average annual cost to appellee of maintaining these tracks is approximately $540,000.00. (Gov. Ex. O, p. 1.) The mileage of industrial tracks serving industrial plants not affiliated with the United States Steel Corporation is by comparison negligible. (Gov. Ex. O, p. 1; Def. Ex. 21, R. 412.)

153.)[32] Mr. Banks made certain suggestions for modifying the rental provisions of the lease and stated that he would be glad to have Mr. Filbert use the letter if it would help him "to formulate a plan to be laid before Judge Gary." (Gov. Ex. B, R. 154.)

After a conference between Judge Gary, Mr. Banks and Mr. Buffington, certain modifications[33]

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[32] Note also the following statements in this letter:

"We have a thousand coke cars that cost us about $150,000 last year for steel plates to make them suitable for carrying the by-products coke. These cars were originally latticed steel cars and had to be made solid bodies so as to prevent the wasting of the coke. The revenue received by the railroad for the handling of this coke does not compensate it for its investment and the service it performs.

"When there is slack business in the Steel Company's plant, we cannot reduce our operating expenses in proportion to the reduction of the plant. As an illustration—At Joliet there are four blast furnaces. The Steel Company can close down one furnace or 25% of their capacity and yet we cannot withdraw a single man or a single engine on account of the same. We have less work for our engines to do but the other three blast furnaces must be taken care of and therefore our expenses are not reduced. They can make a further reduction by taking out another blast furnace, thus reducing their capacity 50% and still we will not be able to take off a single man or an engine engaged in serving their furnaces." (Gov. Ex. B, R. 153–154.)

[33] These modifications were considerably less favorable to appellee than those which Mr. Banks had suggested. (Compare Gov. Ex. B, R. 155, with Gov. Ex. B, R. 154.) Mr. Banks was not satisfied and on December 6, 1917, again complained to Mr. Filbert of the inequities of the rental provisions. (Gov. Ex. B, R. 156–157.) He pointed out that appellee "has been compelled (because it was good business and *for the interest of the Corporation* to do so)" to expend large

were agreed to and Judge Gary requested that after the draft of the modifications was prepared it should be submitted to the Steel Corporation for review before it was executed. (Gov. Ex. B, R. 155–156.) Thereafter, an amendment was executed, as of December 1, 1913. (Gov. Ex. X2, R. 376–383.)

Two minor contentions made by appellee with respect to this lease may be briefly noted. Appellee relied upon testimony by Mr. Banks that his purpose in urging the lease was the possible economies to be derived by operating the two roads as one. (R. 29, 42.) If this fact is at all material, it is sufficient to point out that the documentary evidence clearly does not bear out Mr. Banks' testimony. That the dominant purpose for making the

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sums for shops and other facilities at Joliet, which facilities would be much larger than necessary for appellee's power and equipment, should appellee ever be separated from the Lake Shore; that appellee has had to carry the burden of both roads when the steel business, and consequently also traffic over the Lake Shore, was poor; and that a "further reason for giving the E., J. & E. a better division of surplus earnings is to avoid the payment of excess taxes on the part of the Corporation," since the profits of the Lake Shore swell "the already large earnings of the Illinois Steel Co." so that it pays " a greater percentage of Income Tax," whereas an increase in the earnings of appellee "would not call for as high a rate of taxation." (Gov. Ex. B, R. 156–157.) He felt, therefore, that "the best interest of the Corporation would be conserved by granting" a more equitable division of appellee's surplus earnings. (Gov. Ex. B, R. 156.)

The amendment of December 21, 1917 (Gov. Ex. X3, R. 384–388) did not eliminate the rental provisions of which Mr. Banks complained in the foregoing letter.

lease was to prevent the loss of divisions is apparent throughout all of the documentary evidence.[34] The other contention made by appellee was that the documentary evidence discloses that Judge Gary was at first opposed to making the lease. (Gov. Ex. B, R. 135, 138.) It is difficult to understand what comfort appellee derives from that fact. That the lease could not be made until Judge Gary's approval was obtained only serves to demonstrate the dominant part played by the officials of the Steel Corporation in the decision upon this important railroad matter.

10. Conclusion

The Government does not wish to burden the Court with a summary of the foregoing analysis of the evidence. This analysis is itself only a summary of what the record discloses.

It is, of course, recognized that it is normal, usual and desirable for a stockholder to keep informed

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[34] The first place in the documentary evidence at which the possible advantages of the lease from an operating point of view is mentioned, is in Mr. Filbert's letter of October 15, 1907 to Judge Gary. (Gov. Ex. B, R. 139.) It is merely one of the numerous items listed by Mr. Filbert for consideration. Mr. Bank's lengthy reply of December 3, 1907 (Gov. Ex. B, R. 141–146) devotes one short paragraph to this matter (Gov. Ex. B, R. 143). Mr. Filbert in his letter of December 28, 1907 to Mr. Banks stated, "After all the crux of the matter, in my mind, is in the first problem you touch on. 'What advantages would accrue from the standpoint of traffic relations with connecting trunk lines.'" (Gov. Ex. B, R. 146–147.)

of the affairs of a corporation. It is also recognized that some of the practices shown by the record are not, *when considered alone,* necessarily indicative of the exercise by the Steel Corporation of control over the affairs of its subsidiaries. But, as previously stated, the Government does not rely upon any particular fact considered alone, but rather upon all of the evidence in the record and upon each fact considered in the light of all other facts.

One point should be made clear. If a stockholder desires to participate in the affairs of a corporation in a manner usual and normal, he may ask that certain information be furnished or that certain kinds of reports be forwarded to him. If that stockholder desires to supervise, direct and control the affairs of that corporation he will, of course, obtain all of that information, all of those reports, and *he will do more.* The fact that the stockholder in the latter case may be obtaining information which it is also normal and usual for stockholders to obtain, should not be permitted to obscure the issue as to whether upon a consideration of *everything* done by the stockholder, the inference is compelled that the "ownership of stock is resorted to, not for the purpose of participating in the affairs of the corporation in which it is held in a manner normal and usual with stockholders, but for the purpose of making it a mere agent, or instrumentality or department of another company." (*United States* v. *Reading Co., supra,* pp. 62–63.)

Certainly the facts in this case are far stronger than those upon which the Reading Railway was held by this Court in the *Reading* case to be a mere agent or instrumentality of the Reading Company. (*Supra*, pp. 26–35.) Indeed, it is difficult to conceive of a case in which the evidence in support of that proposition would be as compelling as that in the present record.

To mention some of the practices: it is clearly not "normal and usual" for a stockholder to decide what expenditures for improvements shall be made by the corporation; nor to obtain control of the surplus funds of the corporation; nor to control the clearing of transactions between various corporations in which the stockholder owns stock; nor to obtain daily or weekly reports of the bank balances of such corporations, or weekly reports of purchases, or reports of all capital expenditures; nor to obtain the filing by such corporations of contracts and bids, or the making of "budget estimates"; nor to "recommend" the amount of dividends to be declared; nor to hold periodical meetings of the presidents of such corporations. To be sure, these are methods which the stockholder may find it necessary to adopt in order effectively and efficiently to supervise and direct the affairs of such corporation, but surely they are not for that reason any the less proof that such supervision and direction are in fact practiced.

III

THERE IS NOTHING IN (A) THE CHARACTER OF THE TRANSPORTATION SERVICE WHICH APPELLEE PERFORMS FOR THE PRODUCING SUBSIDIARIES OF THE UNITED STATES STEEL CORPORATION OR (B) THE MANNER IN WHICH APPELLEE'S AFFILIATION WITH SUCH SUBSIDIARIES EXISTS, I. E., THROUGH THE COMBINATION OF THEIR STOCK IN A HOLDING COMPANY, WHICH PREVENTS THE COMMODITIES CLAUSE FROM BEING APPLICABLE TO THE TRANSPORTATION OF THE COMMODITIES IN QUESTION

Appellee contended below that for some reason the Commodities Clause does not apply at all to the transportation by appellee of the commodities owned by the producing subsidiaries. This contention was presumably made even on the assumption that the Steel Corporation in practice administers the affairs of appellee and of the producing subsidiaries as mere agents, instrumentalities, or departments of one industrial organization. Indeed, as will presently appear, the contention would seem, at least in part, to be predicated upon the premise that the appellee is but a transportation facility of the United States Steel Corporation, and to that extent the contention directly contradicts appellee's assertion that it is an independently operated common carrier not subject to the domination or supervision of the United States Steel Corporation.

The Government has been at great pains to understand precisely what the contention is. Appellee complained in the court below that the Government misunderstood or misstated its conten-

tion. As a major portion of appellee's brief below was devoted to this contention, and as it will doubtless constitute one of the principal arguments of appellee in this Court, the Government deems it essential to attempt to state the contention and to endeavor to answer it.

So far as the Government has been able to ascertain, the contention appears to proceed upon two different notions. There is the thought, first, that because appellee transports a considerable volume of freight between different plants of the subsidiaries of the Steel Corporation and between such plants and the lines of connecting carriers, the Commodities Clause is inapplicable to such transportation. And there is the further thought that a railroad which is a subsidiary of a producing company or of a holding company cannot, as a matter of law, be held to have an interest within the Commodities Clause in commodities owned by the producing company or by producing subsidiaries of the holding company. It is urged that this kind of affiliation between a railroad and a producing company is to be carefully distinguished from an affiliation existing by virtue of the ownership by a railroad of the stock of a producing company. Appellee's argument appears to be based either on each of these notions separately or on both in combination. The Government contends that each of these contentions is without foundation and is based upon an erroneous conception of

the provisions and purposes of the Commodities Clause.[35]

A. AS TO THE CHARACTER OF THE TRANSPORTATION SERVICE WHICH APPELLEE PERFORMS FOR THE STEEL CORPORATION SUBSIDIARIES

In its answer appellee alleged (R. 23) that "it is and was at all times mentioned in said amended petition an industrial railroad whose principal service is performed for the subsidiaries of the United States Steel Corporation and consists in the main of intraplant and interplant and interchange and terminal service" and that "it performs an intermediate or interline service between trunk line carriers with which it connects, an interchange serv-

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[35] The *opinion* of the court below apparently rejects in its entirety this contention of appellee. It states, after discussing the decisions of this Court (R. 598):

> Irrespective of form, if the facts in a given case show that a railroad company occupies the inconsistent position of carrier and shipper, then the railroad company is violating the Commodities Clause. The question is one of fact. * * *

But, in the conclusions of law requested by appellee and adopted and signed by the court (R. 499) it is stated (R. 498), that on the facts found appellee "as a matter of law is not guilty of violating" the Commodities Clause, and that (R. 499):

> The transportation in interstate commerce by a railroad corporation whose stock is owned by an industrial corporation, of commodities produced or owned by such industrial corporation, is not a violation of said Commodities Clause of said Interstate Commerce Act, but is sanctioned by, and subject to regulation under Section 15 (13) of said Interstate Commerce Act.

ice between such carriers and industries on its line other than the subsidiaries of the United States Steel Corporation, and a relatively minor amount of local service for the general public."

In its brief below, appellee stated (p. 61):

> The line of the Elgin, Joliet, and Eastern Railway Company connects the plants of the Illinois Steel Company with the plants of the other named subsidiaries. It also connects all of these plants with all of the trunk lines entering the City of Chicago. These facts demonstrate the legitimate economic purpose of the Steel Corporation in acquiring the railroad. The use of it made it an industrial railroad within the definition of the Interstate Commerce Commission in its report made to Congress in 1910, four years after the passage of the Hepburn Act, irrespective of whether it was such prior to its acquisition. (See 24th Annual Report of Interstate Commerce Commission, page 33.)

This would seem to suggest that appellee contends that it is a so-called "industrial railroad" and that such railroads are beyond the scope of the Commodities Clause. But at another place in its brief appellee stated (p. 13):

> It is not Defendant's position that the Commodities Clause does not apply to any "industrial railroad", that Defendant is an "industrial railroad", and that therefore the Commodities Clause does not apply to Defendant.

* * * * *

> Undoubtedly very few "industrial railroads" come within the Commodities Clause but the Clause does not use the words "industrial railroad" and does not make the definition of an "industrial railroad" the dividing line between the railroads which are included and those which are excluded.

It is difficult to conceive upon what basis appellee could possibly contend that it is or bears any resemblance to, a so-called industrial railroad. The Interstate Commerce Act does not use the words "industrial railroad", and the term does not appear to have any legal significance, but the Commission has described what it deems to be an "industrial railroad" as follows:

> An industrial railway may be defined as an incorporated or unincorporated railway controlled by some manufacturing or mining industry, the major portion of whose traffic is furnished by the controlling company. *Such a road is distinguished from a commercial road in that it is not primarily for the sale of transportation;* it is distinguished from a purely private track or siding in that the operation of its property gives rise to a service to which some definite payment or allowance may be assigned. (24th Annual Report of Interstate Commerce Commission, p. 33.) [Italics supplied.]

Appellee is obviously a "commercial road" operated "primarily for the sale of transportation." The facts in the record (see *supra,* pp. 4–8) con-

cerning the physical extent and characteristics of appellee's line, its incorporation, its tonnage, and the general common carrier service rendered to numerous shippers located upon and served by it, make it clear that appellee does not fall within any concept of the term "industrial railroad." Appellee's operations commenced in 1884. (*Supra,* p. 5.) Its stock was owned by the general public until 1898 or 1899, when it was acquired by the Federal Steel Company, and appellee became one of the subsidiaries of the United States Steel Corporation upon the formation of that corporation in 1901. (*Supra,* p. 5.) Appellee's line bears no resemblance to a short line railroad or a terminal railroad connecting the plants of an industrial corporation with trunk lines. Appellee forms an extended arc around the City of *Chicago in the* course of which it connects with every railroad entering that City, thereby providing an expeditious means of moving freight from the East to the West and *vice versa.* (*Supra,* p. 4.) This peculiarly strategic location, which is the outstanding characteristic of appellee's line and is the principal basis upon which it solicits business from shippers, was a characteristic of appellee's road before the formation of the Steel Corporation, and derives solely from appellee's geographic position and not in any way from the fact that the Steel Corporation owns its stock.

Until 1909 appellee received 75 per cent of its business from the general public and only 25 per

cent from the Steel Corporation subsidiaries, and, indeed, over one half of this 25 per cent was business received by appellee prior to the formation of the Steel Corporation. (*Supra*, pp. 5–6.) Appellee owes its increased volume of Steel Corporation traffic to the lease in 1909 of the Lake Shore road. (*Supra*, p. 6.) It has previously been pointed out that the Lake Shore served "practically one industry, the Illinois Steel Company", with a short haul of about eleven miles to connecting carriers; that it was feared that the Lake Shore would, because of the character of its service, be held to be a terminal or "industrial railroad" and, as such, entitled only to a switching fee, instead of divisions of joint through rates; that it was felt that, if the Lake Shore's business was merged with that of appellee, *which derived 75 per cent of its traffic* from the general public and was admittedly a common carrier, the danger of losing the divisions would be averted because such divisions would then be received by appellee, and the common carrier characteristics of the merged lines would be so obvious as to negative any suggestion that the divisions were being received by a terminal or "industrial railroad"; and that it was for the purpose of obliterating the terminal or "industrial railroad" characteristics of the Lake Shore road that it was decided to lease that road to appellee. (*Supra*, pp. 85–94.) In view of this chapter in the history of appellee and of the Steel Corporation, it is not surprising that appellee advances only diffidently the

suggestion that it is, or bears resemblance to, a terminal or "industrial railroad."

Appellee is clearly a commercial common carrier railroad. Its president testified (R. 120) that "it has no other business except transportation." It has a complete organization of railroad officials, operates 280 freight engines (it does no passenger business), 12,000 freight cars, employs about 7,000 persons, and has two operating divisions, the Joliet division and the Gary division (R. 36). It is a party to about 2,000 tariffs as initial or delivering line, and to a great many tariffs as an intermediate line (R. 90). It is a member of the Illinois Freight Committee and the Central Freight Association (R. 86). It has freight solicitors in Central Freight Association territory, in Illinois and the Southwest, another in the Northwest, and still another in Seattle and the Pacific Coast territory, who solicit freight in those localities to be routed over appellee's line (R. 89).

Appellee is no more a terminal or "industrial railroad" than would be the Pennsylvania Railroad, should the United States Steel Corporation acquire its capital stock.

Nor is there basis for any suggestion that whether a railroad is violating the Commodities Clause depends upon the character of the service which that railroad performs for an affiliated industry. Of course, apart from a case in which a railroad owns the commodities transported, the usual case under the Commodities Clause would

be one in which, as here, the railroad transports the commodities of an industrial corporation with which it is affiliated, and the amount of such traffic might be large or it might be small. The Commodities Clause applies to any common carrier railroad company. *United States* v. *Delaware & Hudson Co.*, 213 U. S. 366, 417–418. Appellee is a common carrier railroad company, is subject to the Commodities Clause, and therefore may not transport commodities which it owns or in which it has an interest, direct or indirect. While the Commodities Clause exempts no railroad companies, it does exempt two classes of commodities: (1) timber and timber products and (2) commodities necessary and intended for use by the railroad for common carrier purposes. Appellees in substance would add another exempted class of commodities, namely, commodities as to which a railroad company renders transportation service of the kind which appellee performs for the subsidiaries of the Steel Corporation. The Government is unable to perceive how such transportation service can be said to be different from the transportation service performed by any common carrier railroad or from the transportation performed for affiliated industrial corporations by the railroads involved in the Commodities Clause cases which have come before this Court.

A similar contention was made by the Delaware & Hudson Company in *United States* v. *Delaware & Hudson Co., supra.* Counsel for that company

contended that its primary business was the production of coal and that it operated a railroad merely as an incident to its industrial functions, and counsel urged [36] (pp. 387–388):

> Clearly the term "railroad company" as used in the commodity clause does not apply to every corporation which operates a railroad. There are numerous industries throughout the country which operate, as incidental to their business, more or less railroad mileage. As to such mileage these corporations may be charged with the duties of a common carrier, and as business may be handled on through bills of lading such corporations would be, with respect to such matters, carriers subject to the act to regulate commerce: Yet such corporations could not, in any just sense, be regarded as railroad companies within the meaning of the commodity clause. In this class the Delaware and Hudson Company is included. The legislative history of this company shows that it is a coal company with incidental railroad functions. Unless, therefore, the expression "railroad company" in the commodity clause is to be taken as meaning every corporation of an industrial character which merely as an incident to its industrial functions operates a railroad, then the clause should not apply to this appellee.

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[36] Note the similarity of appellee's allegations in its answer (R. 23–25) to the contentions of counsel for the Delaware & Hudson Company and to the allegations of the answer of that company (213 U. S. 336, 393–395 f. n.).

> It is perfectly legitimate for an industrial corporation to promote the efficiency and economy of its operations by the construction of railroads when legally empowered to do so. It would be a superlative injustice to treat an industrial corporation as a railroad company because of the operation of a railroad under such circumstances, and then, because the industrial corporation is so treated as a railroad company, to prohibit the industrial corporation from performing the very transportation functions which alone serve as the inducement to the operation of the railroad.

This Court rejected this contention, stating (pp. 417–418):

> There is a contention as to one of the defendants, the Delaware and Hudson Company, to which we, at the outset, referred, which requires to be particularly noticed. Under the charters granted to the company by the States of New York and Pennsylvania it was authorized to secure coal lands and mine coal, and, without going into detail, was originally authorized to construct a canal, and, ultimately, a railroad for the purpose of transporting, for its own account, the products of its mines, and, undoubtedly, vast sums of money have been invested in carrying out these purposes. It is true also that the company is the owner of stock in various coal corporations. The claim now to be disposed of is that by the true construction of its charters the Delaware and Hud-

son Company is not a railroad company within the meaning of the term as used in the commodities clause, but is really a coal company. The contention, we think, is without merit. *The facts stated in the excerpts from the answer and returns of the company, which we have previously placed in the margin, leave no doubt that the corporation was engaged as a common carrier by rail in the transportation of coal in the channels of interstate commerce, and as such we think it was a railroad company within the purview of the clause and subject to the regulations which are embodied therein as we have interpreted them.* [Italics supplied.]

B. AS TO THE MANNER OF APPELLEE'S AFFILIATION WITH THE PRODUCING SUBSIDIARIES

As previously indicated, appellee's contention in this respect appears to be that appellee cannot, as a matter of law, be held to have an interest, direct or indirect, in the commodities of the producing subsidiaries. The argument appears to be that a railroad company may have an interest within the Commodities Clause in the commodities owned by a producing company, where the railroad company owns the stock of the producing company, but may not have such an interest where the stock of both the railroad and the producing company is owned by a holding company. Under appellee's view all that was necessary, apparently, for the railroads involved in the Commodities Clause cases which

have come before this Court, to escape the condemnation of that statute was to reorganize their corporate structure so that the stock of the railroad company and the producing company would be held by a holding company. The *Reading* case (*supra*, pp. 25–35), is squarely against appellee's contention, for there a holding company held the stock of the railroad and of the producing company and this Court expressly held that the railroad subsidiary had an interest within the Commodities Clause in the commodities owned by the producing subsidiary.

The contention is based upon a misconception of the provisions and purposes of the Commodities Clause. The Commodities Clause does not prohibit ownership by a railroad company of the stock of a producing company; or ownership by a producing company of the stock of a railroad company; or ownership by a holding company of the stock of a railroad company and of a producing company; or common ownership by individuals of the stock of a railroad company and a producing company. The Commodities Clause is not a prohibition against stock ownership at all. It prohibits transportation of commodities under certain circumstances. The effect of the decree in a suit in a Commodities Clause case is simply to enjoin the transportation of such commodities.

The Commodities Clause is a simple statute, stated in broad terms to achieve a broad legislative policy. As indicated, it exempts two classes of com-

modities, but with these exceptions it prohibits in sweeping terms the transportation by a common carrier railroad company of any commodities of any description which the railroad owns or in which it has "any interest, direct or indirect." The statute does not specify what constitutes an "interest, direct or indirect." It does not make "interest, direct or indirect" turn upon stock ownership. It does not mention stock or stock ownership at all.

Whether a railroad has an "interest, direct or indirect" in commodities is to be determined upon the basis of the relationship between the railroad and the owner of the commodities, considered in the light of the purpose of the Commodities Clause "to prevent railroads from occupying the dual and inconsistent positions of public carrier and private shipper" and "to separate the business of transportation from the business of selling." *United States* v. *Del., Lack. & West. R. R.*, 238 U. S. 516, 525. This was precisely the approach of this Court in the *Reading case.* (*Supra,* p. 29.)

The decisions of this Court make it clear that stock ownership is not significant in and of itself in determining whether the forbidden interest exists. In *United States* v. *Delaware & Hudson Co.,* 213 U. S. 366, *supra,* the Court held that mere ownership by a railroad of the stock of a producing company was not sufficient to establish an interest on the part of the railroad in the commodities of the producing company. In *United States* v. *Lehigh*

Valley R. R. Co., 220 U. S. 257, the Court held that where, however, the ownership of the stock was resorted to for the purpose of making the producing company an agent, instrumentality, or department of the railroad company, the railroad had such an interest in the commodities, and this ruling has been reaffirmed in subsequent cases, including the holding in the *Reading* case, *supra*, with respect to the Central Railroad Company. These cases do not turn upon stock ownership as such but upon the factual relationship of the railroad company to the owner of the commodities. In *United States* v. *Del., Lack. & West. R. R.*, 238 U. S. 516, 526–527, *supra*, it was stated that common ownership by individuals of a substantial portion of the stock of a railroad company and of a producing company would not in and of itself create the requisite interest in the commodities of the producing company. In that case, as in *United States* v. *Lehigh Valley R. R. Co.*, 254 U. S. 255, the forbidden interest was found to exist not as a result of stock ownership but by reason of a contract governing the sale of the commodities in question.

In the *Reading* case, *supra*, this Court's holding that the Reading Railway violated the Commodities Clause in transporting the commodities of the Reading Coal Company was based, in the Government's view, not upon the fact of stock ownership as such, but upon the peculiar nature of a holding company, the very purpose and function

of which is to reduce its subsidiaries to its mere agents, departments or instrumentalities. In that case, it is submitted, this Court recognized that ownership by a holding company of the stock of a subsidiary railroad and of subsidiary producing companies was not substantially different from direct ownership by one corporation of title to both the railroad and the producing properties. Whether the Government is correct in its interpretation of the *Reading* case, it is in any event clear that that case stands squarely for the proposition that a subsidiary railroad, such as appellee, may have an interest within the meaning of the Commodities Clause in commodities owned by producing subsidiaries of a holding company.

Indeed, it must be obvious that the decisions of this Court do not mark out the limits of "interest, direct or indirect", within the meaning of the Commodities Clause.[37] The decisions do indicate certain situations in which the forbidden interest exists. There may be other situations, similar to or wholly unlike those in the decided cases, in which a railroad company may have the forbidden interest in commodities transported by it.

Appellee has endeavored to create the impression that dire consequences would follow a decision

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[37] In its brief below appellee stated (p. 30): It [*United States* v. *Lehigh Valley R. R. Co.*, 220 U. S. 257] sets the limits beyond which the Commodities Clause cannot be carried.

in favor of the Government in this case. Appellee introduced in evidence a list of terminal railroads affiliated with an industrial or mining corporation which is stated to be the principal shipper over the railroad in question (Def. Ex. 34, R. 417–425). It is to be noted that this is denominated a list of terminal railroads. As previously indicated, appellee neither is nor resembles a terminal road. But, apart from that consideration, it is plain from what has been stated that a decision in this case will not involve a holding either that it is unlawful for industrial corporations to own the stock of such railroads or that it is unlawful for a railroad to transport the commodities of a producing corporation which owns its stock. The present case is one of a holding company and a decision favorable to the Government will certainly not affect the transportation of commodities by any railroad which does not bear the same relationship as does appellee to a holding company and to producing subsidiaries of that holding company. In the case of a common carrier railroad company whose stock is owned by a producing company, mere stock ownership would not create the forbidden interest in the commodities of the producing company. Whether the transportation of such commodities would in such a case constitute a violation of the Commodities Clause would depend upon the particular facts there presented. If, upon such facts, it appears that the railroad is independently oper-

ated, that it functions as a common carrier without reflecting in its operations "the dual and inconsistent positions of public carrier and private shipper" or, in other words, that there is in fact a separation of "the business of transportation from the business of selling" (*United States* v. *Del., Lack. & West. R. R.*, 238 U. S. 516, 525), the transportation of the commodities would not be in violation of the Commodities Clause. Surely, that is not too great a burden for a railroad company to assume when it undertakes to serve the public as a common carrier.

The Government searched in vain in appellee's brief below for any assertion that the evils designed to be prevented by the Clause are any the less present where a railroad and a producing company are agents or instrumentalities of a holding company than where a producing company is an agent or instrumentality of a railroad company or where one corporation holds title directly to a railroad and producing properties. In the *Reading* case, *supra* (p. 29), this Court expressly stated that transportation by the Reading Railway Company of the commodities of the Reading Coal Company, both being subsidiaries of a holding company, was "clearly within the evil to be remedied" by the Commodities Clause (253 U. S. 26, 61).

Appellee relied upon many collateral matters in support of its contention that the Commodities Clause was not applicable to the transportation by

it of the commodities of the subsidiary producing companies. While the Government submits that what has already been stated is sufficient to dispose of this contention, it is believed that it will be helpful to the Court if these matters are briefly explained.

(1) *Section 15 (13) of the Interstate Commerce Act*

Appellee's reliance on Section 15 (13) of the Interstate Commerce Act is the most difficult of appellee's contentions for the Government to understand. This section reads as follows:

> If the owner of property transported under this Act directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality used therein, the charge and allowance therefor shall be no more than is just and reasonable, and the commission may, after hearing on a complaint or on its own initiative, determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the services so rendered or for the use of the instrumentality so furnished, and fix the same by appropriate order, which order shall have the same force and effect and be enforced in like manner as the orders above provided for under this section. (Act of June 29, 1906, c. 3591, 34 Stat. 584, 590, as amended by Act of June 18, 1910, c. 309, 36 Stat. 539, 553–554; U. S. C., Title 49, Sec. 15 (13).)

Appellee's contention apparently is that it would be inconsistent with Section 15 (13) of the Act to hold that the Commodities Clause is applicable to the transportation by appellee of the commodities of the producing subsidiaries. Without going into the confusing ramifications of the argument which appellee bases upon this Section, the Government presents a brief statement of the origin of this Section and the function which it performs as part of the statutory system for the regulation of the railroads.

Section 15 (13) was enacted in 1906 as part of the Hepburn Act. In its Annual Report for 1905 (19th Ann. Rep. I. C. C., Dec. 14, 1905) the Commission reprinted, as an appendix, a draft of a bill embodying recommendations for amendments to the Act to Regulate Commerce, which the Commission had submitted to the Senate Committee on Interstate Commerce at the request of that Committee. The Report contained (pp. 5–13) a brief explanation of the amendments recommended. One of such amendments was a provision substantially in the form of Section 15 (13) as enacted in the Hepburn Act [38] (*Ibid,* Appendix E, p. 179).

The purpose of this provision is clearly stated in the Commission's Annual Report for 1905 (p. 10):

> There is an important class of cases, in which the owner of the property performs a

[38] The Commodities Clause was not one of the provisions included in the bill recommended by the Commission (19th Ann. Rep. I. C. C., Dec. 14, 1905, Appendix E).

part of the transportation service, where the carrier, by paying such owner an extravagant sum for the service rendered, thereby prefers him to other shippers of like property. This may happen in any case where the shipper is the owner of any of the facilities of transportation or performs any part of the transfer service. Such preference may take the form of an excessive division to a terminal road owned by the shipper; the payment of an excessive elevator charge to the owner of the grain; the payment of an excessive mileage upon the private car which conveys the property of the owner of the car. Our investigations leave no room for doubt that all these methods are at the present time more or less resorted to for the purpose or with the effect of preferring one shipper to another.

In its Annual Reports for 1903 and 1904 the Commission had described certain practices which were being resorted to as devices for preferring shippers by making excessive payments to them for the use of facilities owned by them and used in performing part of the transportation service (17th Ann. Rep. I. C. C., Dec. 15, 1903, pp. 11, 18–26; 18th Ann. Rep. I. C. C., Dec. 19, 1904, pp. 6, 10–23.) The Commission particularly stressed the practice, used by industrial corporations, of incorporating railroad companies to operate intraplant tracks and tracks extending from plants to connecting carriers, the railroad companies then re-

ceiving divisions of joint through rates from such connecting lines on the theory that they were common carriers (17th Ann. Rep. I. C. C., Dec. 15, 1903, pp. 18–22; 18th Ann. Rep. I. C. C., Dec. 19, 1904, pp. 19–23). In referring to this practice the Commission said:

> The terminal road is, in our judgment, one of the most dangerous means for the preferring of favored shippers at the present time, and we earnestly call the attention of Congress to this situation. (18th Ann. Rep. I. C. C., Dec. 19, 1904, p. 19.)

The Commission regarded these roads as "mere switching roads", or roads "existing only on paper", organized as a method by which rebates could be given to shippers without in form departing from the published tariffs (17th Ann. Rep., I. C. C., Dec. 15, 1903, p. 11). One of the roads specifically referred to by the Commisison as falling in this category was the Lake Shore Road (18th Ann. Rep. I. C. C., Dec. 19, 1904, pp. 21–23). Appellee obviously bears no resemblance to such a road.

The Annual Reports of the Commission thus make clear both what the Commission meant in referring to terminal roads and also the function intended for Section 15 (13) of the Interstate Commerce Act. The language of that Section clearly indicates its purpose. It provides in simple language that a carrier shall pay only a just and rea-

sonable allowance to a shipper for any service rendered, or any instrumentality furnished, by such shipper in connection with transportation performed by a carrier, and gives the Commission jurisdiction to determine and fix a reasonable maximum charge to be paid therefor by the carrier. See *Interstate Commerce Commission* v. *Diffenbaugh,* 222 U. S. 42.

Prior to the decision of this Court in *Tap Line Cases,* 234 U. S. 1, the Commission believed that it could hold that terminal roads were not common carriers with respect to the transportation they performed for the affiliated industry, even though they hauled some non-proprietary traffic for the general public and held themselves out as public carriers. See *The Tap Line Case,* 23 I. C. C. 277, and 23 I. C. C. 549; see *Industrial Railways Case,* 29 I. C. C. 212. Under this view, although the terminal railroads were regarded as common carriers as respects non-proprietary traffic for which they would be entitled to receive divisions of joint through rates, they would not be entitled to such divisions as to the proprietary traffic, but the industrial corporation which owned such a road would, to the extent that the road performed part of the transportation service, be entitled to a shipper's allowance under Section 15 (13). In *Tap Line Cases, supra,* this Court pointed out the error of the Commission in attempting to draw such a distinction between proprietary and non-proprietary

125

traffic. The Court held, in substance, that such a railroad was either a common carrier for all purposes or was not a common carrier for any purpose, and that if it was operated to serve the public it was a common carrier "with rights and obligations as such" and therefore entitled, as any other common carrier railroad, to divisions or allowances out of the joint through rates for all traffic transported by it. See *Tap Line Cases,* 234 U. S. 1, 24–27. The Commission in supplemental reports in *The Tap Line Case,* 31 I. C. C. 490, and in *Industrial Railways Case,* 32 I. C. C. 129, modified its original reports in those cases to conform to the decision of this Court in *Tap Line Cases, supra,* and held that such of the roads as were common carriers under the test applied by this Court in *Tap Line Cases* were entitled to make arrangements with trunk lines for through service under joint rates and to receive a division or a switching charge out of such rates. See *O'Keefe* v. *United States,* 240 U. S. 294.

The obvious distinction between a private industrial line owned by an industrial corporation and used in performing part of the transportation service for which a shipper's allowance may be made under Section 15 (13), and a common carrier which receives compensation in accordance with published tariff rates or divisions thereof is made clear in *Manufacturers Railway Co.* v. *St. L., I.*

M. & S. Ry. Co., 28 I. C. C. 93, [39] in which it was said (pp. 101–102):

> * * * allowances are frequently made by the trunk line to an industry under section 15 of the act for services rendered by an industrial line owned by it or its stockholders, as for an instrumentality furnished by the shipper, * * *. These allowances also are voluntarily made as for services performed by the shipper for the trunk line * * *.
>
> Frequently the industrial line develops new traffic, and shippers other than the owning industry locate on its rails, whereupon the owning industry or its stockholders separately incorporate the railway, which thereupon files tariffs with the Commission, claims thenceforth to be wholly separate and distinct from the owning industry, and thereafter holds itself out to serve the owning industry and its other shippers impartially. Assuming the newly made carrier to be under the law a common carrier in all

[39] For the two other decisions of the Commission in that case see 21 I. C. C. 304, and 32 I. C. C. 100. The order issued was sustained by this Court in *Manufacturers Ry. Co.* v. *United States*, 246 U. S. 457. At page 482, the Court mentioned, but deemed it unnecessary to discuss, the distinction drawn by the Commission between divisions or switching absorptions made by trunk lines to industrially owned common carriers, and allowances to shippers, citing *Tap Line Cases*, 234 U. S. 1, 28; *United States* v. *Butler County R. R. Co.*, 234 U. S. 29, 35–36; *O'Keefe* v. *United States*, 240 U. S. 294, 302.

> respects such as it represents itself to be, *it is evident that allowances under section 15 of the act can no longer be made to the owning industry as for services rendered by the shipper, as the railway is no longer a part of or in law connected with the latter which is "the owner of property transported," to whom alone, under that section of the statute, allowances may be made,* but is in the contemplation of the act in the same position as it would be if it had been constructed and was being operated by parties having no interest whatever in the owning industry. Conversely the owning industry would be on the same plane as if it had located as an independent shipper upon the newly made railway after the latter's construction by parties having no connection with the industry. The railway is now a public agency which, if it lives up to the obligations attached by the act to its own representations, should collect its charges from the former owning industry the same as it does from other shippers on its line. [Italics supplied.]

Appellee cited a large number of decisions of the Commission presumably in support of the proposition that an allowance or division out of the through rates to a common carrier railroad whose stock is owned by an industrial corporation is regulated by Section 15 (13) of the Act.[40] Appellee's

[40] The cases cited by appellee were: *Finkbine Lumber Co.* v. *Gulf & S. I. R. Co.*, 269 Fed. 933, certiorari denied, 255 U. S. 574; *Texas & P. Ry. Co.* v. *Thompson*,

use of these cases plainly indicates that appellee has confused an allowance under Section 15 (13) which is made to a shipper for transportation services performed by it with its private plant railroad, with a switching allowance or division received by a common carrier out of through rates. These cases make it clear that whenever the Commission finds that an industrially owned railroad is a common carrier it holds that it is entitled to a division or switching allowance out of the line-haul rates. In no such case did the Commission hold that the shipper which owns the stock of such a common carrier railroad, or the railroad itself, is entitled to a shipper's allowance under Section 15 (13) for services rendered by such common carrier. Only when the railroad is not a common carrier but is merely a private facility owned by the shipper does the shipper receive an allowance under Section 15 (13).[41] When such a railroad is a common

288 Fed. 167, 169; *National Malleable Castings Co.* v. *Pittsburgh & L. E. R. R. Co.*, 51 I. C. C. 537, 541 (and cases cited therein); *Jones & Laughlin Steel Co.* v. *P. & L. E. R. R. Co.*, 53 I. C. C. 556; *American Steel & Wire Co.* v. *Newburgh & S. S. Ry. Co.*, 55 I. C. C. 353; *National Tube Co.* v. *Lake Terminal R. R. Co.*, 55 I. C. C. 469; *Lackawanna Steel Co.* v. *S. B. Ry. Co.*, 56 I. C. C. 684; *Jones & Laughlin Steel Co.* v. *Director General*, 60 I. C. C. 325; *Benwood & Wheeling Connecting Ry. Co.* v. *P., C., C. & St. L. R. R. Co.*, 62 I. C. C. 357; *Carnegie Steel Company* v. *Director General*, 80 I. C. C. 269.

[41] Appellee plainly misinterprets the following language in *National Malleable Castings Co.* v. *P. & L. E. R. R. Co.*, 51 I. C. C. 537, 541:

> In numerous cases subsequently decided we have fixed reasonable allowances for switching to and from

carrier it receives compensation for transportation services, as in the case of any common carrier railroad, through its own tariff rates published individually or jointly with connecting carriers. The Commission's power to regulate and prescribe divisions and switching allowances to common carriers out of through rates is conferred by Section 1 (4) and Sections 15 (3) and (6) of the Act, and not by Section 15 (13).[42]

> the tracks of the line-haul carriers performed by the industry itself either directly or through a common-carrier industrial line and in many instances the character of the switching was similar to that performed by the present complainant [citing cases].

A reading of that case and of the decisions cited by the Commission make it clear that the Commission was, in the above language, dealing only with the question whether the particular services performed were transportation services, which it was the duty of the line-haul carriers to perform for the published tariff rates. The Commission held that the services there involved were such transportation services, and that since they were performed by the shipper with its private tracks and locomotives, the shipper was entitled under Section 15 (13) to compensation therefor from the line-haul carriers.

[42] For a complete statement of the history and development of the Commission's jurisdiction to prescribe divisions and switching allowances out of through rates, see *Brimstone R. R. Co.* v. *United States*, 276 U. S. 104; *New England Divisions Case*, 261 U. S. 184; *Morgantown & Kingwood Divisions*, 49 I. C. C. 540.

The cases listed below illustrate the interpretation and application of Section 15 (13) by the Commission and the courts. They demonstrate that the allowances authorized by Section 15 (13) are for shippers only. We have been able to find no case in which the Commission or the courts

To summarize: Section 15 (13) applies only to allowances to shippers. It has nothing to do with the compensation received by common carriers. A common carrier's compensation is derived from published tariff rates or switching allowances or divisions therefrom. The compensation which appellee receives is not an allowance under Section 15 (13) but is, like any other common carrier railroad, its tariff rates published individually or jointly with connecting carriers. For appellee to

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have held that Section 15 (13) authorizes or regulates allowances to an industrially owned or other common carrier. *Sterling & Son Co.* v. *M. C. R. R. Co.*, 21 I. C. C. 451, 454; *Buffalo Union Furnace Co.* v. *L. S. & M. S. Ry. Co.*, 21 I. C. C. 620, 630–631; *A., T. & S. F. Ry. Co.* v. *Kansas City Stock Yards Co.*, 33 I. C. C. 92, 98–100; *Allowances to Elevators by U. P. R. R. Co.*, 12 I. C. C. 85, 89; *I. C. C.* v. *Diffenbaugh*, 222 U. S. 42; *Galveston Export Co.* v. *T. & F. S. Ry. Co.*, 96 I. C. C. 141; *Armour & Co.* v. *E. P. & S. W. Co.*, 52 I. C. C. 240; *Finkbine Lumber Co.* v. *Gulf & S. I. R. Co.*, 269 Fed. 933 (C. C. A. 5th), cert. den. 255 U. S. 574; *National Malleable Castings Co.* v. *P. & L. E. R. R. Co.*, 51 I. C. C. 537; *General Electric Co.* v. *N. Y. C. & H. R. R. R. Co.*, 14 I. C. C. 237; *Solvay Process Co.* v. *D., L. & W. R. R. Co.*, 14 I. C. C. 246; *New York Central & H. R. R. R. Co.* v. *General Electric Co.*, 219 N. Y. 227, 114 N. E. 115, cert. den., 243 U. S. 636; *Merchants Cotton Press & Storage Co.* v. *I. C. R. R. Co.*, 17 I. C. C. 98; *Pneumatic Scales Corporation* v. *A. & R. R. Co.*, 51 I. C. C. 686, 695; *Donner Steel Co.* v. *D., L. & W. R. R. Co.*, 57 I. C. C. 745; *Central R. R. Co. of New Jersey* v *United States*, 229 Fed. 501, 509, cert. den. 241 U. S. 658; *Merchants Warehouse Co.* v. *United States*, 283 U. S. 501, 511; *Allowances for Stacking*, 179 I. C. C. 780, 783; *Mumby Lbr. & Shingle Co.* v. *Chicago, M., St. P. & P. R. Co.*, 200 I. C. C. 261; *Propriety of Operating Practices—Terminal Services*, 209 I. C. C. 11.

argue that it is inconsistent with Section 15 (13) to apply the Commodities Clause to the transportation by appellee of the commodities of the producing subsidiaries, appellee must contend that Section 15 (13) is applicable to the compensation which it receives for transporting such commodities. In other words, appellee must contend that it is not a common carrier, but is a private facility of the Steel Corporation which, in turn, is entitled to a shipper's allowance under Section 15 (13). This is a far cry from appellee's insistence that it is a common carrier not subject to domination or supervision by the Steel Corporation. Appellee, in short, makes the indefensible assertion that it may escape responsibility under the Commodities Clause upon the basis of another section of the Interstate Commerce Act which, as appellee must be fully aware, is not applicable at all to the transportation service performed by appellee.

The Commission in very clear language has pointed out the error into which appellee has fallen. In *Allowances to Kanawha, Glen Jean & Eastern*, 41 I. C. C. 53, the Commission stated (p. 59):

> The commodities clause forbids common carriers by railroad to transport any articles or commodities, other than timber and the manufactured products thereof and company material, which they own; or in which they have any interest, direct or indirect; or manufactured, mined, or produced by them, or under their authority,

from which they have not genuinely dissociated themselves before the act of transportation. *United States* v. *Delaware & Hudson Co.*, 213 U. S., 366. *The argument frequently is made and is made here that this provision conflicts with the provision of section 15 of the act relative to the compensation of shippers by railroads for assisting them in the service of transportation or for furnishing facilities for such service and that industrial railroads and tap lines are therefore beyond the purview of the commodities clause. The argument is fallacious.* Section 15 recognizes the common-law right of railroads to perform their public duties through agents and by means of hired facilities and merely provides that the Commission may regulate the compensation paid to the agent employed or to the owner of the facility hired if the agent or the owner of the facility is also a shipper. *A., T. & S. F. Ry. Co.* v. *Kansas City Stock Yards Co.*, 33 I. C. C., 92. [Italics supplied.]

And see *Industrial Railways Case*, 32 I. C. C. 129, 132–133[43]; *Second Industrial Railways Case*, 34

[43] In this case the Commission stated (pp. 132–133): "What we have here said relative to establishment of allowances or divisions with the industrial roads referred to is not to be understood as a finding by us that those industrial roads can resume these relations with the trunk line carriers without transgressing the provisions of the commodities clause. If infractions of that law come to our notice, we shall in the proper way bring them to the attention of the Department of Justice."

I. C. C. 596, 604; *Class Rates from Chestnut Ridge Railway Stations,* 41 I. C. C. 62, 64.

In view of these cases it is difficult to perceive upon what basis appellee contends that the Commission has construed the Commodities Clause as being inapplicable to the transportation by a common carrier railroad company of commodities of an industrial corporation which owns the stock of, or controls, the railroad company. These cases prove directly the opposite. And in *Construction of Line by Jefferson Southwestern,* 86 I. C. C. 796, the Commission expressly applied the Commodities Clause to such a situation in exercising its jurisdiction under Section 1 (18) of the Act. In that case an application was made for a certificate of public convenience and necessity authorizing the construction of fourteen miles of railroad to be used principally for the transportation of commodities of a coal company from mines of that company to connecting trunk lines. It appeared that part of the stock of the applicant was subscribed by stockholders of the coal company, the remaining subscriptions being procured by its president, and that the line had been "projected and promoted in the interests of the coal company" (86 I. C. C. 796, 800). One of the trunk lines opposed the granting of the certificate upon the ground that transportation of the coal company's commodities would be in violation of the Commodities Clause. The Commission recog-

nized that it had no power to enforce the Commodities Clause directly but stated that it "ought not to grant a certificate of public convenience and necessity for the construction of a railroad whose operation, it seems reasonable to believe, may prove to be in violation of that clause" (86 I. C. C. 796, 801–802). It therefore attached a condition to the issuance of the certificate under which the certificate was withheld until valid arrangements were made and approved by the Commission whereby the connecting trunk lines would have the opportunity, within a period of not less than five years, to assume control of the new railroad company by the purchase of its stock or by lease. While the Commission stated that it was not deciding that even with such arrangements the transportation would be lawful, it felt that the question was sufficiently doubtful to justify the granting of the certificate thus conditioned, which it believed would "go far to eliminate in this case the public dangers against which the commodities clause was directed" (86 I. C. C. 796, 803). The Commission stated (p. 801):

> It was because of this commodities clause, undoubtedly, that the promoters of applicant concluded "that it was best to procure subscriptions from persons not stockholders of the coal company." Whether or not they have succeeded in escaping from the clause may be doubted, for its language is very broad and it has been broadly interpreted

by the United States Supreme Court. See *United States* v. *Lehigh Valley R. R. Co.*, 220 U. S. 257; *United States* v. *D., L. & W. R. R. Co.*, 238 U. S. 516; *United States* v. *Reading Company*, 253 U. S., 26; *United States* v. *Lehigh Valley R. R. Co.*, 254 U. S. 255.

This brings us to a consideration of some of the reasons underlying the commodities clause and of the reasons which lead the protestants in this case so strongly to oppose the granting of the desired certificate of public convenience and necessity. In our original report we said, at page 782:

> It is evident that the purpose of the promoters is to benefit from competition between the applicant's proposed connections. The president of the applicant and of the coal company, being asked why he wished to build the line, testified that the more transportation a coal mine has, the better off it is. Undoubtedly advantages would be sought in connection with through rates and divisions, absorption of switching charges, and the supply of cars. Indeed the promoters have already entered into negotiations with the trunk lines for favorable arrangements as to these matters.
>
> Control of or affiliation with a short-line railroad by an industry furnishing a large volume of traffic opens the door to grave abuse, particularly when the short line connects with more than one trunk-line railroad.

> By playing one connection against the other they have frequently been able to gain concessions in divisions, or in car supply, or in other matters, which have, in practical effect, amounted to a preference of, or rebate to, the controlling or affiliated industry. Many such cases have taken our time and attention in the past, and they continually arise. Moreover the connecting trunk lines, because of their competition with each other, often hesitate to bring such cases to our attention, and they have usually been considered either upon our initiative or upon complaint of some industry which is aggrieved by the preference. While the abuse has been limited by our regulation, it is doubtful whether it has been abated. It is not surprising that carriers like the Burlington fear the advent of a short-line industrial railroad in the southern Illinois coal field.

In the court below appellee seemed to rely in some way upon the fact that the Commission has known, as appellee stated it, "of the custom of industrial companies owning the stock of railroad companies serving their plants" and "has never taken any steps to condemn that custom until the beginning of this suit." Of course the Commission has known of that "custom", but, as previously stated, there is nothing in the Commodities Clause declaring it to be unlawful for a producing company to own the stock of a railroad company, as

the Commission has clearly pointed out. See *The Alaska Investigation*, 44 I. C. C. 680, 709; *Adriatic Mining Co.* v. *C. & N. W. Ry. Co.*, 78 I. C. C. 611, 619; *Campbell's Creek Coal Co.* v. *A. A. R. R. Co.*, 29 I. C. C. 682, 692–693. In *The Alaska Investigation, supra,* the Commission stated (p. 709):

> Nor does it appear that the act prohibits the mere ownership by a mining company of the stocks or other securities of a railroad over which its products are shipped. *U. S.* v. *D. & H. Co.*, 213 U. S. 366; *U. S.* v. *L. V. R. R. Co.*, 220 U. S. 257; *U. S.* v. *D., L. & W. Ry. Co.*, 238 U. S. 516; *Campbell's Creek Coal Co.* v. *A. A. R. R. Co.*, 29 I. C. C. 682, 693.

And in *Campbell's Creek Coal Co.* v. *A. A. R. R. Co., supra,* the Commission stated (p. 692):

> It would seem further, that since it is the fact of identity, the commingling of the affairs of the two companies, which causes the prohibited interest, it is immaterial under what form of stock ownership the consequence may have been brought about. This view is not inconsistent with our earlier statements that mere ownership of a railroad by the principal shipper on its line is not prohibited by the act.

(2) Legislative history of the Commodities Clause

Appellee urged below that the legislative history of the Commodities Clause shows that it was not intended by Congress to be applicable to the trans-

portation by appellee of the commodities of the producing subsidiaries. This contention was largely based upon the false premise that Section 15 (13) of the Act regulates the compensation received by a common carrier railroad company for transporting commodities of an industrial corporation which owns the stock of the railroad company. From this false premise it was argued that it would be inconsistent to suppose that Congress intended to prohibit by the Commodities Clause what Congress regulated and, therefore, sanctioned under Section 15 (13). What has been said sufficiently demonstrates the wholly false assumptions upon which this argument is predicated. The argument has other fallacies as well. Even if it be assumed (what is clearly not the case) that Section 15 (13) regulated the compensation received by appellee for the transportation of the commodities of the producing subsidiaries, it does not follow that it would be inconsistent with that section to hold that the Commodities Clause prohibits the transportation of such commodities, if it is found that appellee has an interest, direct or indirect, therein. For by the same token it could be argued that the Commodities Clause does not prohibit anything at all since the Interstate Commerce Act regulates the compensation received by common carriers for all transportation services performed by them and therefore, on appellee's view, necessarily sanctions all transportation under any circumstances.

54316—36——10

Appellee also argued that the debates in Congress demonstrate that the Commodities Clause was not intended to prohibit, under any circumstances, the transportation by an industrially owned railroad of the commodities of the affiliated industrial corporation. But the Commodities Clause by its express terms applies to any common carrier railroad company and to all commodities (other than two exempted classes) in which a railroad company has an interest, direct or indirect. It obviously does not permit of any construction which either would exempt certain common carrier railroad companies or would create additional classes of exempted commodities. Resort to legislative history, under such circumstances, is plainly improper. *United States* v. *Shreveport Grain & Elevator Co.*, 287 U. S. 77, 83–84. "Such aids are only admissible to solve doubt and not to create it." *Wisconsin R. R. Comm.* v. *C., B. & Q. R. R. Co.*, 257 U. S. 563, 588–589. Moreover, debates in Congress may not be resorted to, even in the case of an ambiguous statute. *Duplex Co.* v. *Deering*, 254 U. S. 443, 474; *United States* v. *Trans-Missouri Freight Association*, 166 U. S. 290, 318–319.

But since appellee went into the debates at great length in the court below, it is proper at least to point out that the debates not only do not support appellee's contention but prove the opposite. Appellee referred to various passages contained in the following pages of the Congressional Record. 40

Cong. Rec., Pt. 7, 59th Cong. 1st sess., pp. 6455, 6456, 6459, 6460, 6496, 6498, 6499, 6500, 6551, 6559, 6561, 6562, 6563, 6564, 6565, 6566, 6567, 6568, 6569, 6570, 7011, 7012, 7013, 7014, 7015, 7016, 7017. Appellee urged that the debates show that the primary evil with which Congress was concerned was the discrimination against independent producers of coal which had resulted from the acquisition by railroads, principally in the East, of coal mines. The conditions in the coal fields were undoubtedly a dramatic incentive to Congress to enact legislation seeking to prevent common carriers from occupying the dual and inconsistent position of common carrier and private shipper. But, as is usually the case where a particular evil may exist generally, Congress in enacting the Commodities Clause provided a general remedy.

Congress did, however, exempt timber and timber products. As the Court stated in *Tap Line Cases, supra* (pp. 27–28):

> While Congress in enacting the Commodities Clause amending §1 of the Act to Regulate Commerce (June 29, 1906, c. 3591, 34 Stat. 584) sought to divorce transportation from production and manufacture and to make transportation a business of and by itself unallied with manufacture and production in which a carrier was itself interested, the debates, which may be resorted to for the purpose of ascertaining the situation which prompted this legislation, show that

> the situation in some of the States as to the logging industry and transportation was sharply brought to the attention of Congress and led to the exemption from the Commodities Clause of timber and the manufactured products thereof, thus indicating the intention to permit a railroad to haul such lumber and products although it owned them itself. And that Congress had the constitutional power to enact such exemption was held in *United States* v. *Delaware & Hudson Co.*, 213 U. S. 366, 416–7. This declaration of public policy which is now part of the Commerce Act cannot be ignored in interpreting the power and authority of the Commission under the act. The discussion resulting in the action of Congress shows that railroads built and owned by the same persons who own the timber were regarded as essential to the development of the timber regions in the Southwest and the necessity of such roads was dwelt upon and set forth with ample illustration by Commissioner Prouty in his concurring opinion in this case.

And see *O'Keefe* v. *United States, supra,* p. 301.

Some of the very excerpts which appellee quoted from the debates show that various Senators called attention to the fact that not only in the lumber industry but also in other industries, many roads had been built by the industries in order to bring their products to connecting trunk line carriers, and they urged that a sweeping provision would cause seri-

ous injury to such industries. See, for example, iron industry (40 Cong. Rec. 6496); coal mining (40 Cong. Rec. 6460); lead and copper mining (40 Cong. Rec. 6563–6564, 6565).

The failure of Congress to exempt the products of these various industries transported by their own railroads and the express provision of exemption in favor of the lumber industry constitutes affirmative proof (if such proof were needed) that Congress intended that the Commodities Clause should apply, except in the case of the lumber industry, to transportation by all industrially owned railroads of the products of affiliated industrial corporations.[44]

Appellee urged below that the Senate "made a very definite and specific record" to the contrary when it rejected an amendment which was designed to make stock ownership in and of itself sufficient to render the transportation unlawful.[45] It was

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[44] Further evidence that Congress drew no distinction between industrially owned and other common carriers is found in the rejection by the Senate of amendments designed to limit the application of the Commodities Clause to carriers whose principal business was that of a common carrier (40 Cong. Rec., Pt. 7, 59th Cong., 1st sess., pp. 7015, 7016, 7017).

[45] The amendment referred to was as follows:

> After May 1, 1908 it shall be unlawful for any common carrier to engage in the transportation of interstate commerce if such common carrier shall at the time be interested, directly or indirectly, by stock ownership or otherwise, in the article or property which is the subject-matter of such commerce, or if it be interested at the time, directly or indirectly, by

partly upon the basis of the rejection of this amendment that this Court held in *United States* v. *Delaware & Hudson Co.*, 213 U. S. 366, 414–415, that mere ownership by a railroad of the stock of a producing company did not create the forbidden interest under the Commodities Clause. But, of course, the rejection of this amendment is no indication of any legislative intent that an industrially owned railroad should under no circumstances be deemed to have an interest within the Clause in the commodities owned by the affiliated industrial corporation. The subsequent Commodities Clause decisions make this clear (*supra*, pp. 116–118). The rejection of this amendment can certainly mean no more than that mere stock ownership is not suf-

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stock ownership or otherwise, in the mines or factories producing such commerce; or if at the time any officer, director, agent, or employee of such common carrier be interested, directly or indirectly, by stock ownership or otherwise, in the business of buying or selling such article or property which is the subject-matter of such commerce, or in the mines or factories producing the same; or if at the time stockholders owning more than 10 per cent of the capital stock of such common carrier be interested, directly or indirectly, in the business of buying or selling such article or property which is the subject-matter of such commerce, or in the mines or factories producing the same.

This section shall not prevent a common carrier from mining coal or carrying articles or property for its own use or for the use of its officers, directors, agents, employees, or stockholders (40 Cong. Rec., Pt. 7, 59th Cong., 1st sess., p. 7012).

ficient to create the forbidden interest.[46] As previously stated, the Government does not predicate this case upon mere stock ownership (*supra*, pp. 117–118).

(3) Construction by the Attorney General

Appellee made the startling assertion below that the Attorney General has construed the Commodities Clause as not applying at all to the transportation by an industrially owned common carrier railroad of the commodities of an affiliated industrial corporation. It would have been a noteworthy error indeed if the Attorney General had construed the clear language of the Commodities Clause as either exempting certain common carrier railroad companies or as exempting certain classes of com-

[46] Appellee makes a similar error in relying upon the fact that Congress failed to act on certain bills subsequently introduced to amend the Commodities Clause so as to provide, among other things, that stock ownership in and of itself should create the forbidden interest. These bills are H. R. 26983, 61st Cong., 2nd sess., introduced in the House on June 18, 1910 (45 Cong. Rec., Pt. 8, p. 8479); and H. R. 20470, 63rd Cong., 3rd sess., introduced in the House on December 31, 1914 (52 Cong. Rec., Pt. 1, p. 838). (Def. Exs. 32, 33, R. 124.) It is to be noted, moreover, that these bills were designed also to prohibit transportation even where the railroad did not have an interest in the commodities at the time of transportation, but had merely produced, owned, or had an interest in such commodities prior to transportation. It will be recalled that this Court, in the *Delaware & Hudson* case, *supra*, had construed the Commodities Clause as applying only where the railroad owned or had an interest in the commodities at the time of transportation.

modities in addition to those specifically excepted by Congress from the operation of the Clause. Had the Attorney General made such an error, his erroneous construction would obviously have no legal significance whatever. Clearly, an executive department of the Government may not construe an enactment of Congress so as to repeal it in part, or so as to make it conform to what the executive department deems desirable. As would be expected, an examination of the Attorney General's Annual Reports reveals that no such error was committed. The following are the places where we have been able to find discussion by the Attorney General of the Commodities Clause: Ann. Reports, Attorney General, Dec. 10, 1909, pp. 3–4; Dec. 10, 1910, pp. 6–7; Dec. 2, 1912, pp. 23–24; Dec. 1, 1913, pp. 25–26; Dec. 7, 1914, pp. 5–7, 22–23; Dec. 6, 1915, pp. 7–8; Dec. 4, 1916, pp. 7–8; Dec. 4, 1917, pp. 7–8; Dec. 5, 1927, pp. 26–27; Dec. 1, 1930, pp. 28–29 (present suit mentioned); Jan. 5, 1934, pp. 27–28 (present suit mentioned); Jan. 5, 1935, p. 30 (present suit mentioned); 29 Opinions, Attorney General, p. 587. Appellee quoted in its brief below isolated excerpts from some of the foregoing. Appellee's error is sufficiently demonstrated by the conclusion which appellee itself drew from these excerpts, namely, that the Attorneys General "have uniformly held that the Commodities Clause does not prohibit such ownership of railroads by indus-

trial companies." If the reports of the Attorney General show that, they only prove the obvious. We shall do no more than refer the Court to the above-enumerated passages in the Annual Reports. In a general way, it may be stated that most of the discussion of the Commodities Clause contained in the reports has to do with recommendations by the Attorney General for a thorough-going amendment of that statute. Such an amendment was felt to be necessary as a consequence of this Court's decision in *United States* v. *Delaware & Hudson Co.*, 213 U. S. 366, particularly that part of the decision which construed the Commodities Clause as not prohibiting transportation of commodities produced by or under the authority of a railroad, where the railroad had parted with ownership or interest in such commodities before transportation had commenced. The Attorney General also deemed it essential that the Commodities Clause should be so amended as to make mere stock ownership sufficient to constitute the forbidden interest.[47]

[47] It would have been strange, indeed, if, as appellee seemed to suggest, the Attorney General had, even after the decision of this Court in the *Reading* case, *supra*, so construed the Commodities Clause as not being applicable to the transportation by a railroad subsidiary of a holding company of the commodities of producing subsidiaries of that company. The Attorney General could scarcely have failed to construe the Commodities Clause as this Court had construed and applied it in the *Reading* case.

CONCLUSION

It is respectfully submitted that the decree of the District Court should be reversed with directions to enter a decree in accordance with the prayer of the petition.

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FILE COPY

IN THE

SUPREME COURT

OF THE

UNITED STATES.

October Term, 1935.

No. 669.

United States of America,

Appellant,

vs.

Elgin, Joliet & Eastern Railway Company,

Appellee.

On Appeal From the District Court of the United States for the Northern District of Illinois

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INDEX.

PAGE

Jurisdiction 3

Opinion and Finding 4

Purpose of the Suit and Statute Involved 4

Questions Involved 5

Statement of the Case 7

Finding of Facts 8

Conclusions of Law 11

Summary of Argument 14

Argument 17

I. The instant case is not within the letter or the spirit of the Commodities Clause 17

(1.) The language of the Statute 17

(2) The purpose of the Statute is exactly the purpose expressed in its words 19

Recommendation of the Interstate Commerce Commission of a regulatory amendment 19

Commodities Clause introduced 21

(3) That the purpose of the Statute was exactly that expressed in its words and no more is proved by the legislative history of the Commodities Clause 22

An amendment to the Commodities Clause which was requested 24

PAGE

(4) The foregoing conclusions are strongly enforced, if indeed that be necessary, by the construction of the Statute by those charged with its execution and application 28

A. The Interstate Commerce Commission 29

B. Department of Justice 33

Opinions of various Attorneys General 33

C. The Congress 33

(5) The decisions of this court show that the instant case is neither within the spirit nor the letter of the Commodities Clause 34

II. Answering the Government's Point I the mere holding by one company of the stock of another does not *ipso facto* make the latter a mere agent or instrumentality of the former or give it an interest in the products produced by the other corporation whose stock is also held by the former 41

(1) The assertion of the Government that the mere holding of stock by a holding company involves the surrender to the holding company of the entire conduct of the affairs of the subsidiaries, and their abdication of all independent corporate action as a matter of law, is proven to be false as a matter of fact in the instant case 44

(2) This case is founded on a Statute and nothing else 45

(3) Congress expressly excluded, what Government now asserts it included, by rejecting the Tillman amendment 45

(4) The Commodities Clause was not intended to provide a broad general rule 45

(5) The holding company does not violate the law 45

(6) The Reading case 46

PAGE

III. Answering the Government's Point II, the facts discussed under this point are irrelevant to any issue in the case and the ultimate facts have been found contrary to the Government's contention 64

(1) Interlocking directors 68

(2) Method of selecting appellee's officers and directors .. 69

(3) Declaration of dividends 69

(4) Directors' approval of contracts 70

(5) Location of offices and division counsel 70

(6) Meetings of presidents 70

(7) Control of capital expenditures 70

(8) Control of surplus funds in the advance account 71

(9) Control of the clearing of inter-subsidiary transactions 72

(10) Bonus, pension and stock purchase plan 72

(11) Reports, budget estimates, inter-subsidiary purchases and bank accounts 73

(12) Trackage agreement with the Chicago and Eastern Illinois Railway Company 75

(13) Lease of the Chicago, Lake Shore and Eastern Railroad Company 76

Conclusion 78

IV. Answering the Government's Point III the appellee makes but few if any of the contentions which Government purports to answer under this point 79

A. Character of service 79

B. Manner of appellee's affiliation with producing subsidiaries 82

C. Section 15 (13) of the Interstate Commerce Act 86

D. Legislative history 92

E. Construction by the Attorney-General 92

Conclusion 93

INDEX TO APPENDICES.

PAGE

Appendix A..... 95

Legislative History..... 95

(a) The evils aimed at..... 95

(b) Ownership of railroads by industrial companies not to be disturbed..... 102

(c) The Senate made a very definite and specific record that it did not desire the Commodities Clause to apply where the shipper of a commodity also owned an interest in the railroad..... 111

Appendix B..... 117

Construction Put Upon the Commodities Clause by the Department of Justice..... 117

TABLE OF CASES CITED.

	PAGE OF BRIEF	PAGE OF APPENDIX
Adriatic Mining Co. v. C. & N. W. Ry. Co., 78 I. C. C. 611, 619	31	
Alaska Investigation, The, 44 I. C. C. 680, 709	31	
American Steel & Wire Co. v. Newburgh and South Shore Ry. Co., 55 I. C. C. 353	32	
Benwood & Wheeling Connecting Ry. Co. v. P. C. C. & St. L. R. Co., 62 I. C. C. 357	32	
Carnegie Steel Co. v. Director General, 80 I. C. C. 269	32	
Chestnut Bridge Railroad, 37 I. C. C. 558	32	
Chicago West Pullman, 37 I. C. C. 488	32	
Interstate Commerce Commission by Diffenbaugh, 222 U. S. 42	91	
Jones and Laughlin case, 91 I. C. C. 300	32	
Jones and Laughlin Steel Co. v. Director General, 60 I. C. C. 325	32	
Jones and Laughlin Steel Co. v. P. & L. E. R. R. Co., 53 I. C. C. 556	32	
Kanawha, Glen Jean & Eastern Railroad, 41 I. C. C. 53	32	
Lackawanna Steel Co. v. S. B. Ry. Co., 56 I. C. C. 684	32	
Manufacturers Railway Co. v. United States, 246 U. S. 457	84, 90, 91	
Moshassuck Valley Railroad, 37 I. C. C. 567	32	
National Malleable Castings Co. v. P. & L. E. R. R. Co., 51 I. C. C. 537, 541	31	

	PAGE OF BRIEF	PAGE OF APPENDIX
National Tube Co. v. Lake Terminal R. Co., 55 I. C. C. 469	32	
New York, New Haven and Hartford Railroad Co. v. Interstate Commerce Commission, 200 U. S. 361, 50 L. Ed. 515	23	101
Northern Securities case	43	
O'Keefe v. United States, 240 U. S. 294	88, 89, 91	
Tap Line Cases, 234 U. S. 1	82, 84, 91	
United States v. Cerecedo Hermanos y Compania, 209 U. S. 337, 339, 53 L. ed. 821, 822	34	
United States v. Delaware & Hudson Co., 213 U. S. 366 (the "Hudson" case)	17, 25, 34, 35, 36, 41, 44, 45, 50, 52, 54, 55, 62, 84, 85	117, 118
United States v. Delaware, Lackawanna & Western Railroad Co., 238 U. S. 516 (the "Lackawanna" case)	25, 26, 39, 52, 53, 54, 55, 62, 83	
United States v. Elgin, Joliet & Eastern Railway Company, 11 Fed. Supp. 435	4	
United States v. Falk, 204 U. S. 143, 51 L. ed. 411	34	
United States v. Lehigh Valley Railroad Co., 220 U. S. 257 (the "Lehigh" case)	26, 36, 37, 40, 52, 53, 54, 60, 62	117, 118
United States v. Reading Co., 253 U. S. 26 (the "Reading" case)	19, 33, 37, 40, 43, 45-63, 84	

STATUTES CITED.

Interstate Commerce Act (49 U. S. C. A.)

Section 1 (8), The "Commodities Clause" 4, 17

Section 1 (9) 22

Section 15 (13), The "Regulatory Section" 21, 87

MISCELLANEOUS AUTHORITIES CITED.

	PAGE OF BRIEF	PAGE OF APPENDIX
Attorney General, Annual Report of		
Report of December 10, 1910		117
Report of December 7, 1914		118
Report of December 16, 1915		118
Report of December 4, 1916		119
Report of December 4, 1917		119
Report of December 5, 1927		119
Attorneys General, Opinion of, Vol. 29, p. 592		117
Congress		
63rd, Third Session, H. R. 20470	33	
Congressional Record		
Vol. 40, p. 6455		95
Vol. 40, p. 6456		96
Vol. 40, p. 6459		96
Vol. 40, p. 6460		102
Vol. 40, p. 6496		97, 104
Vol. 40, p. 6498		97, 102
Vol. 40, p. 6499		97, 102, 105
Vol. 40, p. 6500		102, 106
Vol. 40, p. 6509		102
Vol. 40, p. 6551		98, 111
Vol. 40, p. 6559		111
Vol. 40, p. 6561		111
Vol. 40, p. 6562		98, 102

	PAGE OF BRIEF	PAGE OF APPENDIX
Vol. 40, p. 6563		106
Vol. 40, p. 6564		98, 106
Vol. 40, p. 6565		102, 108, 109
Vol. 40, p. 6566		102, 109, 110
Vol. 40, p. 6567		99, 110
Vol. 40, p. 6568		101, 111
Vol. 40, p. 6569		111
Vol. 40, p. 6570		111
Vol. 40, p. 7011		101, 111, 112
Vol. 40, p. 7012		112, 113
Vol. 40, p. 7013		113
Vol. 40, p. 7014		113, 115
Vol. 40, p. 7015		115
Vol. 40, p. 7016		115
Vol. 40, p. 7017		115
Vol. 45, Part 5, p. 5590, 5591, 5594	33	
Vol. 45, Part 7, p. 7207, 7208, 7251, 7252	33	
Vol. 45, Part 8, p. 8479, 8480	33	
Vol. 52, Part 1, p. 838	33	
Vol. 52, Part 1, p. 838, 963		119
Interstate Commerce Commission, Report of		
Nineteenth Annual Report	29, 80, 88	
Report re Hepburn Bill	19	
Twenty-fourth Annual Report	13, 29, 80	
Report (1915), 36 I. C. C. 557	30	
1915 Special Report to Congress	77	

IN THE

SUPREME COURT

OF THE

UNITED STATES.

October Term, 1935.

No. 660.

United States of America,
Appellant,

vs.

Elgin, Joliet & Eastern Railway Company,
Appellee.

On Appeal From the District Court of the United States for the Northern District of Illinois.

BRIEF FOR APPELLEE.

Jurisdiction.

The Government invokes the jurisdiction of this Court under U. S. C. A., Title 49, Section 45, and Title 28, Section 345, to review a decree of the District Court for the Northern District of Illinois, Eastern Division, entered on the 28th day of August, 1935, dismissing the Government's bill for want of equity. [R. 512.]

Opinions and Findings.

The opinion of the District Court [R. 500] is reported in 11 Fed. Supp. 435. The formal Findings of Fact and Conclusions of Law will be found at page 497 of the record.

Purpose of the Suit and Statute Involved.

The suit was brought to enjoin the appellee, a subsidiary of the United States Steel Corporation, from transporting certain commodities produced and owned by manufacturing and producing subsidiaries of said corporation on the ground that such transportation was in violation of Section 1 (8) of the Interstate Commerce Act (34 Stat. 584; 49 U. S. C. A. 1 (8),) commonly known as the Commodities Clause, reading as follows:

> "It shall be unlawful for any railroad company to transport from any State, Territory or the District of Columbia, to any other State, Territory, or the District of Columbia, or to any foreign country, any article or commodity, other than timber and the manufactured products thereof, manufactured, mined, or produced by it, or under its authority, or which it may own in whole or in part, or in which it may have any interest, direct or indirect, except such articles or commodities as may be necessary and intended for its use in the conduct of its business as a common carrier."

Questions Involved.

The contention of the Government on the trial was that, despite the undisputed fact that the appellee did not own or have any interest in and had no voice in the production of the commodities transported, the admitted fact that the United States Steel Corporation owned all of the stock of the appellee and all of the stock of the manufacturing and producing subsidiary corporations whose products were transported by the appellee, plus the alleged fact that through certain domination and control exercised by the United States Steel Corporation and the commingling of the affairs of the appellee and its other subsidiaries with its own affairs, the separate corporate existence of the appellee and the manufacturing and producing subsidiaries was obliterated and that thus the case was brought within the Commodities Clause. The District Court in its opinion stated the contention of the Government thus:

> "The question presented is, therefore, a narrow one. It is contended that the defendant comes within the prohibition of the Statute because the Steel Corporation has exercised such management, domination, control, direction and coordination over the defendant and the producing and manufacturing subsidiaries of the Steel Corporation, as to establish in the defendant an 'interest, direct or indirect', in the articles or commodities transported. In other words, it is contended that the Steel Corporation has exercised such domination and control over both the defendant and the producing and manufacturing subsidiaries as to destroy the separate corporate entities and to reduce all corporations to one."

Since the Government does not now question the finding of the District Court that "The existence and free functioning of defendant as a common carrier railroad corporation and a separate corporate entity was not destroyed or obstructed or interfered with by the United States Steel Corporation", [Finding 3, R. 497] and since the Government has recognized the appellee as a distinct corporate entity by making it the sole party defendant, it no longer makes that claim.

The Government now, for the first time in this Court, advances two propositions:

(1) The mere fact that the United States Steel Corporation owns the stock of the appellee and also the stock of its manufacturing and producing subsidiaries, gives the appellee an interest in the commodities owned by the producing companies within the meaning of the Commodities Clause.

(2) The appellee, although having a *bona fide* separate administration of its own, is so dominated, supervised and directed by the United States Steel Corporation as to be a mere agent, department, branch or instrumentality of the latter, and that thereby it acquires an interest in the products of the producing and manufacturing subsidiary corporations transported by it.

The Government states the questions in somewhat different language, but if we understand its position, the foregoing correctly states the position which it must take since it does not question the findings of the District Court establishing the *bona fide* separate administration of the affairs of the appellee by its own management.

Statement of the Case.

The Elgin, Joliet & Eastern Railway Company is a belt railroad around the city of Chicago. It extends from Porter, Indiana, near the south end of Lake Michigan, westerly to Joliet, Illinois, and thence northerly and northeasterly to Waukegan, Illinois, north of Chicago on Lake Michigan. It has a branch leading to South Chicago located southeast of Chicago and on Lake Michigan, and to Gary located still farther east and on Lake Michigan. It crosses and connects with every railroad entering the city of Chicago. It is commonly called the Chicago Outer Belt Line. The map, Exhibit 14, opposite page 406 of the record, shows the location.

The Illinois Steel Company has steel plants located at South Chicago, Gary and Joliet, those at South Chicago and Gary being among the largest in the world. Iron ore is smelted at these plants and heavy steel articles such as rails, beams, plates, rods, bars and billets are produced. The American Bridge Company, the American Sheet and Tin Plate Company and the National Tube Company have plants at Gary. The American Steel and Wire Company has plants at Joliet and Waukegan. The Cyclone Fence Company has a plant at Waukegan. These companies are all subsidiaries of the United States Steel Corporation and are engaged in businesses indicated by their names. They obtain the steel out of which their products are manufactured from the plants of the Illinois Steel Company above referred to. [R. 81-84.]

The Elgin, Joliet & Eastern Railway Company connects the said plants with one another, and also supplies them with rail connection with each of the trunk line railroads entering the city of Chicago. Its function is to transport

semifinished products between said plants, products—mainly raw materials—between interchange points with the trunk line railroads and said plants, and finished products from the plants to said interchange points where they enter the streams of commerce. [R. 510.] That constitutes 60% of its business. [R. 90.] It also performs similar service for other shippers located on its line, and serves as an interchange between trunk lines. The latter constitutes the remaining 40% of this business. [*Id.*]

Mr. Banks, the president of the appellee when suit was brought; Mr. Filbert, the comptroller of the United States Steel Corporation when suit was brought; Mr. Chessman, chief clerk in the accounting department of the appellee, and Mr. Rogers, formerly vice president, at the time of the trial the president of the appellee, all testified, among other things, to the effect that no one connected with the Steel Corporation or its producing subsidiaries, had anything to do with the operation of the railroad, and that its affairs were administered by its own management, separate and distinct from the affairs of the Steel Corporation and its other subsidiaries. [R. 120, 95-96, 62-63, 43-44.]

We here set forth in full, for the convenience of the Court, the formal findings of fact and conclusions of law, since they are brief:

> "1. The defendant has not transported in Interstate Commerce any article or commodity (other than timber and the manufactured products) which actually, as a matter of fact, was manufactured, mined, or produced by it or under its authority or which actually, as a matter of fact, was owned in whole or in part by it or in which it actually, as a matter of fact, had an interest direct or indirect except such articles

or commodities as were necessary and intended for its use in the conduct of its business as a common carrier.

2. The primary business of defendant is that of a common carrier. Its other acts and transactions were incidental to its primary business of transportation. The United States Steel Corporation never took any part in transporting any commodities over the railroad of the defendant or in operating or in managing the operation of defendant's railroad or of any of the facilities of such operations or gave any directions or exercised any control over the transportation conducted over the railroad of defendant or took any part in any of the transactions between the defendant and the shippers over its railroad.

3. The existence and free functioning of defendant as a common carrier railroad corporation and a separate corporate entity was not destroyed or obstructed or interfered with by the United States Steel Corporation, neither was the public recognition of defendant as a common carrier railroad company concealed, obscured, or given any particular character to distinguish it from other common carrier railroads by anything done by the United States Steel Corporation.

4. All communications and conferences between representatives of the United States Steel Corporation and representatives of defendant whether properly characterized as orders, requests, advice, or the exercise of control, and whether originating with the United States Steel Corporation or with defendant, related solely to the internal affairs of the defendant and to the relations between United States Steel Corporation and defendant, and did not relate to the transaction by defendant of its transportation business or the relation between the defendant and those for which it performed transportation business.

5. Defendant regularly filed and published tariff rates covering the transportation services performed by it in accordance with the provisions of the law. In the conduct of its transportation business defendant did not discriminate against or in favor of any of its patrons either in service or in charges, but treated all alike and in accordance with its filed and published tariffs.

6. The defendant did not contribute any property or labor or exercise any authority in, or take any part in manufacturing, mining or producing any of the commodities transported by it or own, in whole or in part, or acquire any interest direct or indirect in any of the commodities transported by it (other than timber and the manufactured products thereof and such articles and commodities as were necessary and intended for its use in the conduct of its business as a common carrier).

7. All transactions and communications between United States Steel Corporation and defendant were carried on in the form of transactions and communications between two separate and distinct corporations and in such transactions and communications neither the two corporations nor their affairs were merged or mixed.

8. Defendant conducted all of its affairs in its own name for itself and in the manner and form of a corporation.

9. The United States Steel Corporation did not conduct for defendant any of its business affairs between defendant and any other persons or corporation, but defendant conducted all of its business affairs through and by its own officers and employees and not through, or by anyone acting as an officer or employee of the United States Steel Corporation.

10. Neither the President, Secretary, Treasurer, Manager, or Superintendent of defendant nor any of its executive or managing operatives is an officer of or employee of the United States Steel Corporation.

11. Whenever any information concerning the affairs of defendant or any other action by defendant was desired by United States Steel Corporation, the United States Steel Corporation never obtained such information or took such action directly by its own officers or agents, but always made request for such information or action through the officers of defendant, in the way which is customary and usual between corporations which are separate and distinct corporations.

12. Neither the money, accounts, or properties of defendant were commingled with the moneys, accounts, or properties of United States Steel Corporation, but the moneys, accounts and properties of each company were kept separate and distinct from the moneys, accounts and properties of the other and the identity and integrity of the moneys, accounts and properties of each company were preserved without any mixture, commingling, or confusion."

"CONCLUSIONS OF LAW.

1. On the facts stated in the foregoing findings of fact the Elgin, Joliet and Eastern Railway Company as a matter of law is not guilty of violating section 1 (8) Interstate Commerce Act, 34 Stat. 584, U. S. C., Title 49, Section 1 (8), herein referred to as the Commodities Clause of the Interstate Commerce Act.

2. The mere ownership of all of the stock of an industrial corporation by a railroad company, or of

the stock of a railroad company by an industrial corporation, or of the stock of both a railroad corporation and an industrial corporation by a holding corporation does not create a violation of said Commodities Clause of said Interstate Commerce Act even when such railroad corporation transports in interstate commerce commodities produced or owned by such industrial corporation.

3. The transportation in interstate commerce by a railroad corporation whose stock is owned by an industrial corporation, of commodities produced or owned by such industrial corporations, is not a violation of said Commodities Clause of said Interstate Commerce Act, but is sanctioned by, and subject to regulation under Section 15 (13) of said Interstate Commerce Act." [R. pp. 497-499.]

The Government's only criticism of those Findings is that they are extremely general. Of course, the Findings were directed to the contention actually made by the Government on the trial. They state the ultimate facts. The Government requested voluminous findings, mostly of evidence. [R. 442-480.] They were not adopted by the Court. [R. 499.]

The Government does not contend that the corporate structure involved was availed of as a device to violate the Anti-Trust laws, the Commodities Clause of the Interstate Commerce Law or any other law. It does not contend that there was any *mala fides* in the acquisition and ownership of the Appellee by the United States Steel Corporation. It no longer contends that the Appellee is not a separate and distinct legal entity or that there has

not been a *bona fide* separate administration of its affairs. The District Court said:

> "The acquisition of the stock of defendant grew out of an important business need. It served a legitimate economic purpose. The record is devoid of any evidence from which an inference could be drawn that the stock was acquired with the intent and purpose to avoid either the Anti-Trust Laws or the Commodities Clause." [R. 510.]
>
> * * * * * * * * *
>
> "But no single piece of evidence, taken alone, nor all taken together and considered as a whole, warrant the inference that the defendant and the producing and manufacturing subsidiaries are under the domination, control, direction and management of the Steel Corporation in the sense that the defendant and the other subsidiaries are mere departments, branches, adjuncts and instrumentalities of the Steel Corporation. The evidence fails to show that the defendant has any interest, direct or indirect, legal or equitable, in the articles or commodities which it transports for the subsidiaries of the Steel Corporation." [R. 511.]

The Appellee is an industrial railroad as defined by the Interstate Commerce Commission. [1910 24th Annual Report of I. C. C., p. 33, Ex. 29-a, R. 205.] It was acquired by the United States Steel Corporation in 1901 when the latter was organized. [R. 26.] The Hepburn Act containing the Commodities Clause amendment was passed in 1906. The suit was brought in November, 1930, nearly 25 years later. [R. 1.]

Summary of Argument.

It will be noted that Appellee's argument is not at all what Appellant says that it is. Appellee's position before the District Court was the same as it is here.

The essence of Appellee's argument is this:

Appellant seeks in this proceeding to enjoin Appellee, a common carrier, from transporting certain commodities because, as Appellant alleges, Appellee is violating the so-called Commodities Clause of the Interstate Commerce Act. That Statute prohibits a railroad company from transporting commodities, if such commodities are "produced by it or under its authority, or which it may own in whole or in part, or in which it may have any interest, direct or indirect." The proceeding cannot be maintained unless Appellee is violating the Commodities Clause. There is no other ground for the proceeding.

It was proved at the trial and is stated in the Court's findings, which are not challenged, that Appellee was not transporting commodities which were produced by it, etc. With those facts established, Appellee contends that the case ends.

Appellant argues that notwithstanding the facts stated in the Court's findings, this Court ought to adopt the fiction that Appellee does what in fact it does not do. Appellant's argument consists in presenting reasons why

the Commodities Clause should be distorted from the meaning conveyed by the simple and natural meaning of the words used.

Beyond a plea that the Statute be interpreted in accordance with the natural meaning of the words of the Statute, Appellee's argument is directed against the fallacies of Appellant's theories.

That the Commodities Clause means just what appears on its surface and does not apply to the business carried on by Appellee is shown in many ways. It is shown by comparing it with other provisions of the same Statute. It is shown by the proceedings in Congress when the Statute was under consideration, particularly by the rejection by Congress of an amendment which would have made the Statute apply to situations such as shown by the evidence in this case. The purpose of the Statute, it is shown, is in accordance with the language of the Statute, no more, no less. Furthermore, the authorities whose duties require them to enforce the Statute have, during many years, held that the Statute means just what appears on its face. This includes the Interstate Commerce Commission and several Attorneys General. Congress itself has taken the same view.

The previous decisions of this Court are analyzed and discussed. The theories deduced by the Appellant from those decisions are controverted.

The United States Steel Corporation owns the stock of Appellee. The evidence shows that it evinced its interest in Appellee in various ways. Appellant presents the facts bearing on the relation between the two companies at great length. Appellee points out in this connection that the Interstate Commerce Act, including the Commodities Clause, is directed to the transportation services performed by common carriers. Its field is such transportation services. Its purpose is not the prevention or regulation of the internal affairs of common carriers. Its concern is the relation between carriers and the shipping public. Appellee therefore contends that the incidents which Appellant presents at such great length are irrelevant to any issue in this case. They relate only to the internal affairs of Appellee. The evidence and the findings of the District Court show that the United States Steel Corporation does not interfere in any way with the operation by Appellee of its railroad. Appellee operates its railroad and serves the several subsidiaries of the United States Steel Corporation and the shipping public independently and freely and to the entire satisfaction of everyone concerned. Appellee has been guilty of no wrong and has violated no public policy against the Commodities Clause or against any Statute.

ARGUMENT.

I.

The Instant Case Is Not Within the Letter or the Spirit of the Commodities Clause.

(1) The language of the Statute.

To focus attention upon its plain and unambiguous language, we again quote the Statute:

> "It shall be unlawful for any railroad company to transport from any State, Territory, or the District of Columbia, to any other State, Territory or the District of Columbia, or to any foreign country, any article or commodity, other than timber and the manufactured products thereof, manufactured, mined, or produced by it, or under its authority, or which it may own in whole or in part, or in which it may have any interest, direct or indirect, except such articles or commodities as may be necessary and intended for its use in the conduct of its business as a common carrier."

This Court, commenting upon the Commodities Clause (*U. S. v. Delaware & Hudson Co.*, 213 U. S. 366, 408), said:

> "Recurring to the text of the commodities clause, it is apparent that it disjunctively applies four generic prohibitions, that is, it forbids a railroad carrier from transporting in interstate commerce articles or commodities, 1, which it has manufactured, mined or produced; 2, which have been so mined, manufactured or produced under its authority; 3, which it owns in whole or in part, and, 4, in which it has an interest, direct or indirect."

It now being established by unchallenged findings that the Appellee is a separae and distinct legal entity, and that it maintains a *bona fide* separate and distinct administration of its own affairs, it is plain that applying those four tests, 1, the Appellee has not manufactured, mined or produced the commodities transported by it; 2, they were not mined, manufactured or produced under its authority; 3, it did not own them in whole or in part; 4, it had no interest, direct or indirect, in them.

Had the Government succeeded in establishing the contention made at the trial that the separate corporate entities of the Appellee and the manufacturing subsidiaries had been obliterated so as to cause all of the subsidiaries and the United States Steel Corporation to be "one and inseparable", so as to make them "virtually one", the result would be that there would be no defendant in Court since the United States Steel Corporation is not a party, and the case would not be one of transportation by a railroad company, but rather of transportation by an industrial company, which we shall presently show is not within the Statute.

The contention now is that despite the actual facts the Appellee has an interest either because of the mere form of the corporate organization or on the agency theory now advanced. If it were to be assumed that the Appellee was an agent of the United States Steel Corporation in the conduct of the transportation business, it was certainly not its agent in the manufacturing business, and whilst the United States Steel Corporation might, on the agency theory, be said to have an interest in the transportation business conducted by the Appellee, as well as an interest in the products of the manufacturing companies, the Appellee, as agent of the United States Steel Corporation in

the conduct of the transportation business, certainly acquired no interest in the products produced by other separate and distinct manufacturing corporations, and had no voice in their operations.

Even if the Appellee is an agent of the United States Steel Corporation (which of course we deny), the producing companies are not in any sense agents of the Appellee. Plainly there is no way to bring the case within the Statute except resort be had to fiction or except the substance of the transaction be disregarded for mere form. The Government relies for its first proposition mainly upon the *Reading* case, which we shall later discuss, but in that case the Court disregarded form for substance.

So much for the words of the Statute.

(2) The purpose of the Statute is exactly the purpose expressed in its words.

At the request of Congress the Interstate Commerce Commission recommended a bill to amend the Interstate Commerce Act which, when introduced in Congress, became known as the Hepburn Bill. In its report the Commission said:

> *"Terminal Roads, Elevator Charges, and Private Cars.*
>
> There is an important class of cases, in which the owner of the property performs a part of the transportation service, where the carrier, by paying such owner an extravagant sum for the service rendered, thereby prefers him to other shippers of like prop-

erty. This may happen in any case where the shipper is the owner of any of the facilities of transportation or performs any part of the transfer service. *Such preference may take the form of an excessive division to a terminal road owned by the shipper;* the payment of an excessive elevator charge to the owner of the grain; the payment of an excessive mileage upon the private car which conveys the property of the owner of the car. Our investigations leave no room for doubt that all these methods are at the present time more or less resorted to for the purpose or with the effect of preferring one shipper to another.

It has been suggested that the Congress should prohibit railways from employing any agency or using any facility in the transportation of property which is furnished by the owner of the property. *We should hesitate to recommend at this time so drastic a measure as that. Assuming that such a law would be a constitutional exercise of authority, it would seriously interfere with property rights which have grown up under the present system. Moreover, there are many instances in which the service can be rendered or the facility furnished more advantageously both to shipper and railway and without injury to the public if provided by the shipper himself.*

We do think, however, that the Commission should be empowered in a case of this kind to determine whether the allowance to the property owner is a just and reasonable compensation for the service rendered and to fix a limit which shall not be exceeded in the payment made therefor. Such a remedy would not be altogether adequate, and any remedy is extremely difficult of application, but nothing better appears to be available." (Italics ours.) (19th Annual Report of I. C. C. for 1905, p. 10.)

To accomplish the purpose recommended the Commission presented a Statute which, with slight changes, became Section 15, sub-section 13. It reads as follows:

> "If the owner of property transported under this chapter directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality used therein, the charge and allowance therefor shall be no more than is just and reasonable, and the Commission may, after hearing on a complaint or on its own initiative, determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the services so rendered or for the use of the instrumentality so furnished, and fix the same by appropriate order, which order shall have the same force and effect and be enforced in like manner as the orders above provided for in this section."

During the discussion of the Hepburn Bill, including the Section just quoted, another amendment was offered by Senator Elkins which finally took the form of what is known as the Commodities Clause above quoted. It thus appears that Congress had before it at the same time two closely-related situations, though radically different in practical effect, which the Congress dealt with in two different ways. One was the case of the ownership by an industrial company of a terminal railroad connecting its plant with trunk line railroads. That is the instant case. The fact that a holding company owns the stock of the railroad and of manufacturing subsidiaries does not alter the situation in substance in any degree whatsoever. The fact that the holding company had become an established institution in the industrial life of the country was well known. The fact that many of the so-called

industrial railroads were owned by holding companies which also owned the stock of their subsidiary manufacturing companies was well known. The organization of the United States Steel Corporation was, of course, well known.

The other case was where a railroad company owned an industry like a coal-mining industry, and transported the products of such industry. The Congress treated the first case by regulation. (Section 15 (13), Interstate Commerce Act.) It deal with the second situation by prohibition (Section 1 (8), Interstate Commerce Act).

If, now, subsection 8 of Section 1 be interpreted to prohibit the transportation of the commodities now being transported by the Appellee, it will prohibit what subsection 13 of Section 15 put under the supervision of the Interstate Commerce Commission to be regulated.

Another provision of the Act (Section 1 (9)) immediately following the Commodities Clause was designed to protect industries which had to acquire or construct lateral or branch lines to reach the main lines by requiring common carriers to install, maintain and operate switch connections with lateral or branch lines of railroads or sidetracks.

(3) That the purpose of the Statute was exactly that expressed in its words and no more is proved by the legislative history of the Commodities Clause.

We have quoted in Appendix (A) from the Congressional Record the debates on the Commodities Clause. When the Hepburn Bill was under consideration the practice of railroad companies owning industries, primarily coal mines, and becoming miners, shippers, sellers

and carriers of coal, was brought to the attention of Congress, and it was shown that the great railroad companies running through the anthracite coal fields were monopolizing the coal business. The case of *N. Y. N. H. & H. v. I. C. C.* (200 U. S. 361) had just been decided.

The debates quoted in the Appendix plainly show that the Congress had before it two situations for consideration: (1) The evil of discrimination practiced by the coal carriers in an effort to monopolize the coal industry, illustrated in the *N. Y. N. H. & H.* case. That it decided to prohibit. (2) The absolute necessity of industrial companies owning branch or terminal roads to connect with the main lines, which, in many instances, the latter would not themselves construct. It also had before it the statement by the Interstate Commerce Commission of the danger of excessive allowances and divisions where the industry was permitted to perform a part of the transportation service, either directly or through a subsidiary railroad. That, upon the recommendation of the Interstate Commerce Commission, the Congress decided not to prohibit, but to regulate. It thus plainly appears that in incorporating the Commodities Clause by amendments subsequent to the introduction of the Act, the Congress intended to cover only the limited field specifically covered by its terms and intended to cover another part of the field by the regulatory provisions. The words of the Commodities Clause were chosen with a nice discrimination to include just what it was desired to include and to exclude just what it was desired to exclude.

In the course of the debate Senator Tillman offered an amendment known as the "Tillman Amendment", which reads as follows:

> "After May 1, 1908, it shall be unlawful for any common carrier to engage in the transportation of interstate commerce, if such common carrier shall at the time be interested, directly or indirectly, by stock ownership or otherwise, in the article or property which is the subject-matter of such commerce, or if it be interested at the time, directly or indirectly, by stock ownership or otherwise, in the mines or factories producing such commerce; or if at the time any officer, director, agent, or employee of such common carrier be interested, directly or indirectly, by stock ownership or otherwise, in the business of buying or selling such article or property which is the subject-matter of such commerce, or in the mines or factories producing the same; or if at the time stockholders owning more than 10 per cent of the capital stock of such common carrier be interested, directly or indirectly, in the business of buying or selling such article or property which is the subject-matter of such commerce, or in the mines or factories producing the same.
>
> This section shall not prevent a common carrier from mining coal or carrying articles or property for its own use or for the use of its officers, directors, agents, employees or stockholders."

It will be observed that that amendment would have prohibited transportation of products by a common carrier in which it was at the time interested "directly or indirectly, by stock ownership or otherwise", and if at the time stockholders owning more than 10% of the capital stock of such common carriers were interested in the

business of buying or selling such article or property, or in the mines or factories producing the same. That amendment was voted down. Hence, the Supreme Court was constrained to hold that the prohibited interest, direct or indirect, of the carrier was a legal or equitable interest, and that a railroad was not prohibited from transporting the products of an industry whose stock it owned for the reason that the Court could not ascribe to the Congress an intention to include what it expressly excluded. (See *U. S. v. D. & H. Co.*, 213 U. S. 366, 414; *U. S. v. D. L. & W. R. R.*, 238 U. S. 516-526.)

If it is not unlawful for a railroad to transport the products of an industrial corporation whose stock it owns, it certainly cannot be unlawful for it to transport the products of an industrial company which owns its stock, or whose stock is held by another company which also owns its stock. The agency theory which the Government now invokes might, under some circumstances, be applied to a subsidiary of the railroad company. It might be held that such subsidiary, under some circumstances, was a mere agent, and that, therefore, the railroad company itself had produced its products, or that such products had been produced under its authority or that it had an interest, direct or indirect, in such products; but the agency theory cannot possibly give it an interest, direct or indirect, in the products produced by other corporations when it is itself a distinct corporate entity. Moreover, the reason which constrained this Court to hold that a railroad company was not prohibited from transporting the products of an industry whose stock it owns, applies with much greater force when the transportation is of products produced by an industrial corporation which owns its stock, or whose stock is held by another company

which also owns the stock of the railroad company because, first, the rejected Tillman amendment applied to the latter case and, second, because in the latter case the production is further removed from the control or authority of the railroad. This Court said, in *U. S. v. D. L. & W. R. R. Co.* (238 U. S. 516, 527), after referring to its earlier holding to the effect that the rejection of the Tillman amendment unmistakably disclosed a Congressional intent not to make it unlawful for a railroad company to transport coal belonging to a corporation in which the road held stock that *"for a stronger reason it would not necessarily be illegal for the road to transport coal belonging to a corporation whose stock was held by those who owned the stock of the railroad company."* That statement was not mere *dictum*. In that case the stock of the railroad and the stock of the corporation which was used as a selling agency were held by the same stockholders. The Court held that that case was within the Statute, not because of the manner in which the stock was held, but because in fact the coal company was not a *bona fide* separate corporation, but was used by the railroad company as an instrumentality to evade the Statute, and that that relation was established by and through a contract entered into between the railroad company and its creature; a coal-selling company.

Although a railroad company is not prohibited from transporting the products of an industrial company whose stock it owns, it may, of course, bring itself within the Statute by the use of a subsidiary company to evade the Statute. That was held in the case of *U. S. v. Lehigh Valley Railroad Co.* (220 U. S. 257, 274), because in that case the railroad company was found as a fact to have used its stock ownership not "for the purpose of a *bona*

fide separate administration of the affairs of a corporation in which it has a stock interest", but "for the purpose of destroying the entity of a producing corporation and of commingling its affairs in administration with the affairs of the railroad company so as to make the two corporations virtually one". In other words, it was found that the railroad company had abused its power "to do by indirection that which the Commodities Clause prohibits." Upon the undisputed evidence and the unchallenged findings this case would not be within that rule, even though the prohibition of the Statute applied to industrial as well as to railroad companies. But since the Statute applies only to railroad companies, the agency theory cannot possibly be applied so as to give a railroad company having a *bona fide* separate administration of its affairs an interest in the products produced by an industrial company which owns its stock, or whose stock is owned by another company which also owns its stock, and it will be observed that, even where the agency theory is applied to a railroad so as to give it a prohibited interest in the products of a subsidiary industrial company, it has been so applied only in the case where the corporate entity of the subsidiary producing company was so obliterated as to make it and the railroad company "one and inseparable".

Despite the fact that mere stock ownership is not an interest, direct or indirect, within the meaning of the Commodities Clause, as this Court has held, yet a railroad company may so misuse its power as a stockholder as to destroy the entity of its subsidiary and thereby give it the prohibited interest in the commodities produced, etc., but when a producing company itself owns the railroad tracks which connect its plant with trunk line railroads, or owns

the stock of a railroad company whose tracks connect its plant with trunk line railroads, or where its stock is held by another company which also owns the stock of the railroad company, then the producing company and not the railroad company is the sole owner, the sole party interested in the products transported, and on no possible theory of agency can the subsidiary railroad be claimed either to be an owner of or to have an interest in such products—indubitably so where the railroad company is a *bona fide* corporation with a *bona fide* separate administration of its affairs.

(4) The foregoing conclusions are strongly re-enforced, if indeed that be necessary, by the construction of the Statute by those charged with its execution and application.

In all the years which followed the passage of the Hepburn Bill, including the Commodities Clause and the regulatory section in 1906, the Interstate Commerce Commission, the Attorney General and Congress itself have indicated, either directly and specifically, or by implication, that the Commodities Clause means no more than it says, that there is nothing improper in an industrial company owning a railroad or in a holding company owning the stock of an industrial company and a railroad where the products of the industrial company are transported over the railroad. The investments of industrial companies in such railroads have grown to enormous proportions. Exhibit 34 [R. 417-425] is a list of 234 such railroads, valued by the Interstate Commerce Commission in excess of Three Hundred Millions of Dollars. It would be revolutionary to disturb such relations now, and the Commission said in 1905 "that it would seriously interfere with property rights which have grown up under the

present system; moreover, there are many instances in which the service can be rendered or the facility furnished more advantageously, both to the shipper and railroad, without injury to the public, if provided by the shipper himself." (19th Annual Report of Interstate Commerce Commission 10, Defendant's Exhibit 27-a.) [R. 124.] Yet the Commission waited for 25 years, indeed until the country was plunged into a depression, to bring this suit. Who is there to take over and operate these industrial railroads?

A. Interstate Commerce Commission.

In 1910, four years after the passage of the Commodities Clause, in its 24th Annual Report, at page 33, the Commission thus defined what it called an industrial road:

> "An industrial railway may be defined as an incorporated or unincorporated railway controlled by some manufacturing or mining industry, the major portion of whose traffic is furnished by the controlling company. Such a road is distinguished from a commercial road in that it is not primarily for the sale of transportation. It is distinguished from a purely private track or siding in that the operation of its property gives rise to a service to which some definite payment or allowance may be assigned." [Defendant's Exhibit 29-a; R. 124.]

It stated in that report that there were between 2400 and 2500 of such railroads, of which it said that between 400 and 500 were enjoying divisions of rates.

In 1915 the Commission made further investigation and report, pursuant to a resolution of the Senate. 36 I. C. C. 557 [Defendant's Exhibit 31; R. 124]. The Commission found and reported:

> "* * * the relations of the steel corporation to various of its subsidiary railroad and steamship companies have been made a matter of public record. An even more complete record of all such facts has been made in the proceeding by the government, heretofore mentioned, in which it was sought to dissolve the United States Steel Corporation under the so-called antitrust law. United States v. United States Steel Corporation, 223 Fed. 55. The Commissioner of Corporations has also made an extended investigation, the results of which are incorporated in three printed volumes entitled 'Report of the Commissioner of Corporations on the Steel Industry.'
>
> The Commission comes into constant contact with the records and accounts of railroads and other public carriers through its examiners of accounts, and has reason to believe that there is no basis for the allegation that wholesale rebates have been paid to the steel corporation during the period of six years mentioned in the resolution; apparently in alleging that 'offsets' and rebates have been received by the steel corporation during that period the witnesses mentioned had in mind the dividends on the stock of the numerous subsidiary railroad and steamship lines owned by it, and as to this all the facts have been ascertained and are accessible in the various public records just mentioned. Under these circumstances we venture to believe that the resolution of the Senate is sufficiently complied with for all practical purposes by the reference to those investigations in connection with the foregoing statement." [p. 559.]

The Interstate Commerce Commission has held directly in at least two cases that "control of the carrier through stock ownership by an industrial corporation which is its principal shipper is not prohibited by the Interstate Commerce Act."

Adriatic Mining Co. v. C. & N. W. Ry. Co., 89 I. C. C. 611, 619, decided April 19, 1923;

The Alaska Investigation, 44 I. C. C. 680, 709, decided May 17, 1917.

The Commission has inferentially so decided in scores of orders which it has made with regard to industrially owned railroads, inferentially at least approving all transportation which would have been unlawful if the Commodities Clause applied.

When an industry owns a railroad, either through stock ownership or otherwise, connecting its plant with trunk lines of transportation, the right is usually claimed for an allowance or division of the through rate for transportation between the industrial plant and other points of origin or destination. This comes under the Regulatory Section (Section 15 (13)) of the Interstate Commerce Act. The Commission has approved or determined the proper allowance of rates to be paid to the railroad company in a large number of cases of this type.

In the case of *National Malleable Castings Co. v. Pittsburgh & L. E. R. R. Co.*, 51 I. C. C. 537, 541, the Commission said that it had fixed reasonable allowances for switching to and from the tracks of the line-haul carriers performed by the industry itself, either directly or through the industrial line, and it scheduled 24 such cases. Among the cases referred to were industrial or ter-

minal common carrier railroads like *Chicago West Pullman Railroad* (37 I. C. C. 488), *Chestnut Bridge Railroad* (37 I. C. C. 558), *Moshassuck Valley Railroad* (37 I. C. C. 567), *Kanawha, Glen Jean & Eastern Railroad* (41 I. C. C. 53). The allowances made were not mere switching allowances such as might be made to a shipper for use of a plant facility, they were allowances or divisions to common carriers. The Chestnut Bridge Railroad, like the appellee, was originally operated independently of any industry. In principle, none of those cases is distinguishable from the case of the appellee. Following that decision there have been numerous other decisions of like effect, among them the following:

Jones and Laughlin Steel Co. v. P. & L. E. R. R. Co., 53 I. C. C. 556;

American Steel and Wire Co. v. Newburgh and S. S. Ry. Co., 55 I. C. C. 353;

National Tube Co. v. Lake Terminal R. Co., 55 I. C. C. 469;

Lackawanna Steel Co. v. S. B. Ry. Co., 56 I. C. C. 684;

Jones and Laughlin Steel Co. v. Director General, 60 I. C. C. 325;

Benwood and Wheeling Connecting Ry. Co. v. P. C. C. and St. L. R. Co., 62 I. C. C. 357;

Carnegie Steel Company v. Director General, 80 I. C. C. 269;

Jones and Laughlin case (91 I. C. C. 300).

B. Department of Justice.

We have quoted in Appendix B [pp. 117-119], statements of different attorneys general in reports to the Congress between December 10, 1910 and 1927. These reports show that the said attorneys general, even after the decision of this court in the *Reading* case, were of the opinion that the industrial ownership of railroads was permitted by the statute—indeed, on different occasions recommendations were made to amend the Commodities Clause so as to bring the transportation by such railroads within the Act, and at least one bill was introduced in the Congress for that purpose (63rd Congress, Third Session, H. R. 20470), but the bill was never reported.

C. The Congress.

With the knowledge of the construction put upon the Act by the departments of government charged with its enforcement, the Congress has nearly every year amended the Interstate Commerce Act, but no change whatever has been made in the Commodities Clause, except possibly in punctuation. The Act was extensively revised in 1916 when amendments were proposed both in the House and in the Senate to define the "indirect interest" prohibited by the Commodities Clause as including ownership of stock in a manufacturing, mining or producing company. (See proposals by Representative Crumpacker, Congressional Record, Vol. 45 pt. 5, 5590, 5591; Representative Wanger, Id., 5594; Representative Hull, Id. pt. 8, 8479, 8480; Representative Adamson, Id., Vol. 52, pt. 1, 838; Senator Bailey, Id., Vol. 45, pt. 7, 7207, 7208; Senator Crawford, Id., 7251, 7252.)

The Act was reenacted by Congress in 1920 without change so far as the Commodities Clause was concerned. That was an adoption by the Congress of long continued executive construction.

United States v. Falk, 204 U. S. 143;

United States v. Cerecedo Hermanos y Compania, 209 U. S. 337, 339.

(5) The decisions of this Court show that the instant case is neither within the spirit nor the letter of the Commodities Clause.

(1) The case of *United States v. Delaware and Hudson Co.*, 213 U. S. 366 (May 3, 1909):

This case will, for convenience, be referred to as the *Hudson* case.

Several cases were considered together. In some of the cases it appeared that the railroad company owned the stock of a corporation which mined coal which the railroad company transported. A large part of the opinion is given to the question of the constitutionality of the clause [392-414]. The court then interpreted the clause. It kept the language of the clause clearly in mind. It recognized that the problem before it, under the words of the statute, was whether the railroad company owned or had any interest, direct or indirect, in the coal transported merely because it owned the stock of the coal company.

The court reached the conclusion that the Commodities Clause prohibits a railroad company from transporting coal only "when the carrier at the time of the transportation has an interest, direct or indirect, *in a legal or equitable sense*, in the article or commodity, not including, therefore, articles or commodities manufac-

tured, mined, produced or owned, etc., by a *bona fide* corporation in which the railroad company is a stockholder" [p. 415].

In other words, the court held:

(a) A railroad company does not have, within the meaning of the Commodities Clause, an interest, direct or indirect, in coal produced by a mining company when it merely owns the stock of the mining company, and

(b) The interest, direct or indirect, within the meaning of the clause, is a *legal or equitable interest.*

The Supreme Court was constrained in part to reach that conclusion by the action of Congress in rejecting an amendment to the Commodities Clause offered by Senator Tillman (213 U. S. 414). That amendment, if it had been adopted, would have made the Clause apply when the railroad owned stock in the corporation producing the commodity transported by the railroad company. The Tillman amendment also would have applied when stockholders holding even 10 per cent of the stock of a railroad were also interested, directly or indirectly, in the business of buying or selling the article transported or in the mines or factories producing the same [quoted in Appendix 112].

This case is very persuasive in the present case. If a railroad company owning stock in a producing company does not have an interest, within the meaning of the Commodities Clause, in the products of such producing company, then *a fortiori* it does not have such interest in the product of another company merely because a holding company has stock ownership in both such company and the railroad. As between stock ownership by a railroad in an industry, stock ownership

by an industry in a railroad, and stock ownership both in a railroad and in an industry by a holding company, the interest in the first case would be the most direct and in the last the least direct.

(2) The case of *United States v. Lehigh Valley R. R. Co.*, 220 U. S. 257 (April 3, 1911):

This case will, for convenience, be referred to as the *Lehigh* case.

It is one of the cases decided by the Supreme Court under the title of *United States v. Delaware and Hudson Company*, 213 U. S. 366, above referred to.

The case was reversed and remanded in *U. S. v. Delaware and Hudson Company*, 213 U. S. 366. In the lower court the Government presented an amended bill and asked leave to file it. This was refused.

The question in the *Lehigh* case was whether the lower court committed error in refusing leave to file the amended bill. The Supreme Court held that the amended bill made a different case and reversed the case and sent it back again.

The Supreme Court adopted (266) its decision in the *Hudson* case that:

(a) A railroad company does not have an interest, direct or indirect, in the coal produced by a mining company within the meaning of the Commodities Clause when it owns the stock of the mining company.

(b) An interest, direct or indirect, within the meaning of the Commodities Clause, is a legal or equitable interest.

The court then adopted this further proposition raised by the amended bill.

(c) *If a railroad company owns all the stock of a mining company and then so controls the mining company as to obliterate the distinction between the two legal entities, depriving the mining company of all really independent existence and making it a mere agent or department of the railroad, then the railroad company does have an interest within the meaning of the clause in the coal produced by the mining company.*

For the purpose of understanding the position of the Supreme Court in the *Reading* case, later to be considered, this *Lehigh* case is of the greatest importance. It sets the limits beyond which the Commodities Clause cannot be carried.

Under the principles of this case, all of the evidence produced against the Elgin, Joliet and Eastern Railway Company in the instant case becomes unimportant and even trivial. The case stands as the ultimate judgment of this court, not only unchallenged but reaffirmed in the *Reading* case.

The court held very definitely, as will appear on pages 273 and 274 of its opinion in 220 U. S., that:

1. The ownership by the railroad company of the stock of the coal company did not bring the case within the Commodities Clause.

2. That the control exercised by the railroad company over the coal company was not the result of the ownership by the railroad company of the stock in the coal company but of something in addition to that ownership.

3. The control which the railroad company exercised over the industrial company was such as "could

not have existed had the fact that the two corporations were separate and distinct legal entities been regarded in the administration of the affairs of the coal company" [273].

4. "The right of a railroad company as a stockholder to use its stock ownership for the purpose of a *bona fide* separate administration of the affairs of the corporation in which it has a stock interest may not be denied" [274].

5. But "the use of such stock ownership in substance for the purpose of destroying the entity of a producing, etc., corporation and of commingling its affairs in administration with the affairs of the railroad company, so as to make the two corporations virtually one, brings the railroad company so voluntarily acting as to such producing, etc., corporation within the prohibitions of the Commodities Clause. In other words, that by operation and effect of the Commodities Clause there is a duty cast upon a railroad company proposing to carry in interstate commerce the product of a producing, etc., corporation in which it has a stock interest not to abuse such power so as virtually to do by indirection that which the Commodities Clause prohibits, a duty which plainly would be violated by the unnecessary commingling of the affairs of the producing company with its own, so as to cause them to be one and inseparable."

In other words, in order to bring a railroad company within the Commodities Clause, the control exercised by the railroad company over a producing company must extend so far as "to make the two corporations virtually one," that is to say, "so as to cause them to be one and inseparable."

(3) The case of *United States v. Delaware, Lackawanna and Western Railroad Company*, 238 U. S. 516 (June 21, 1915):

For convenience, this case will be referred to as the *Lackawanna* case.

In the instant case the United States Steel Corporation is a holding company, holding the stock of the Elgin, Joliet and Eastern Railway Company and also holding the stock of several producing companies whose products are transported by the Elgin, Joliet and Eastern Railway Company; the fact that the United States Steel Corporation is a holding company, holding stock of a railroad company and of a producing company is much emphasized.

The *Lackawanna* case is of the very greatest importance because it specifically and definitely decides that the union, in one unit, of stock of a railroad company and of stock of a producing company, whose products the railroad company transports, does not bring the case within the Commodities Clause. The court said:

> "But mere stock ownership by a Railroad, or by its stockholders, in a producing Company cannot be used as a test by which to determine the legality of the transportation of such Company's coal by the interstate carrier. For, when the Commodity Clause was under discussion, attention was called to the fact that there were a number of the anthracite roads which at the time owned stock in coal companies. An amendment was then offered which, if adopted, would have made it unlawful for any such Road to transport coal belonging to such Company. The amendment, however, was voted down; and, in the light of that indication of Congressional intent,

the Commodity Clause was construed to mean that it was not necessarily unlawful for a railroad company to transport coal belonging to a Corporation in which the Road held stock. *United States v. Delaware & Hudson Co.*, 213 U. S. 414. *For a stronger reason, it would not necessarily be illegal for the Road to transport coal belonging to a Corporation whose stock was held by those who owned the stock of the Railroad Company.*" [526]. (Italics ours)

There is no ambiguity in that language and it exactly rules the instant case. It was germane to the question actually decided because the converse of the proposition stated would have made it unnecessary to rule on the *bona fides* of the transaction there involved.

This case held that the railroad company came within the purview of the Commodities Clause but not because of the way in which the stock of the producing company was held, but because the transaction under examination was not *bona fide*. The court followed its decision in the *Lehigh Valley* case (220 U. S. 257, 273) above referred to, to the effect that one corporation can be made an agent of another corporation and that, by means of stock ownership, one such company may convert a subsidiary into a mere agent or instrumentality (529). It then held that such a relation was established by and through a contract entered into between the railroad company and its creature, a coal-selling company.

The *Reading* case (253 U. S. 26), will be considered under the next point:

II.

Answering the Government's Point I, the Mere Holding by One Company of the Stock of Another Does Not Ipso Facto Make the Latter a Mere Agent or Instrumentality of the Former or Give It an Interest in the Products Produced by Other Corporations Whose Stock Is Also Held by the Former.

The Government's real contention appears to be that a holding company necessarily involves the surrender by the subsidiary of all but a "semblance of independent existence." The complete answer to that proposition is that as conclusively established by unchallenged findings that has not happened in the instant case. Whether it happens in any case will depend entirely on the use made by the holding company of its stock ownership. The Government seems to think that there is a distinction in that regard between an operating and a non-operating holding company. Manifestly, either can make the same use of its stock ownership; either can allow a *bona fide* separate administration of the affairs of the subsidiary; either can make use of a subsidiary to commit a wrong. The Statute is not violated merely because there may be potential power to violate it. That certainly was decided in the first of the commodities cases (*U. S. v. D & H. Co.*, 213 U. S. 366), and in fact was so ruled in all of the commodities cases. The Commodities Clause was not aimed at holding companies. It says nothing about holding companies. It does not forbid holding companies, nor does it forbid railroads from transporting commodities produced by a subsidiary of a holding company. It specifically defined what it prohibits. Congress did not promulgate a broad general rule to cover all situations—on

the contrary, it expressly limited its action to two specific things: It prohibited railroad companies from transporting commodities which it itself produced and had an interest in, and at the same time provided that if a shipper of goods was participating in the transportation of its goods, such action should not be prohibited, but should be subject to the supervision of the Interstate Commerce Commission.

The instant case is plainly not within the terms of the prohibition. If it were it would not matter that there is an entire absence of wrong-doing or of any wrongful intent. True, a device outside of the literal words of the Act might be employed to evade it. In that case the court would look through form to substance. In that case the court would inquire into the *bona fides* of the transaction. In that case the question would not be one of potential power, it would be whether a device had been employed to evade the law to accomplish the very evil prohibited by the law. The instant case is utterly devoid of any such element. As stated by the District Court, the acquisition of the stock of the Appellee "grew out of an important business need. It served a legitimate economic purpose." [R. 510.] The lawfulness of its ownership by the United States Steel Corporation has been adjudged by this Court. Its *bona fide* separate administration of its own affairs, *i. e.*, its transportation business, was established by the evidence. Moreover, it was affirmatively established that the evil of discrimination aimed at by the Commodities Clause had not been present. [R. 105-116.] The Government says that that evidence merely proves that "the particular shippers and traffic officers who testified had no complaint to offer." The author of that statement was not present at the trial

and not aware of the disclaimer made by the trial counsel for the Government. He must also have overlooked the stipulation that the long list of shippers and officers of connecting carriers would, if called, testify to like effect. [R. 116-118.]

We do not say that that evidence would be an answer if the case were within the terms of the Statute, but we do say that it is a complete answer to the claim that though not within the words of the Statute, it is within the spirit because of the use made by the United States Steel Corporation of its stock ownership.

Of course, the Court will always look through form to substance where a device, no matter what, that of a holding company or any other device, is employed, to evade the law. Such was the *Northern Securities* case cited by the Government. Such, in truth, was the *Reading* case relied upon by the Government, presently to be discussed. Both cases were Anti-Trust cases.

If the contention now made by the Government were sound, all of the Commodities Clause cases have been decided by this Court on the wrong theory, and the very first case was wrongly decided. Any company which holds the stock of another company is *pro tanto* a holding company. It may have other business, but there can be no such distinction as the Government attempts to make between operating companies and non-operating companies which hold the stock of other companies. The Government seeks to read into the Statute something which the Congress expressly excluded, not inadvertently, but after careful consideration.

It is not true, as stated by the Government, that the purpose of the Commodities Clause was broadly to di-

vorce transportation from production. That certainly was decided in the *Delaware & Hudson* case. The purpose of Congress was much more limited, but it was definite. It was to prevent the evils of discrimination and monopolization practiced by railroads engaged in competition with their shippers, primarily the trunk line coal carriers. True, by its terms it applies generally to any railroad, but its application is thus limited to any railroad and cannot be extended to an industry. The ownership of transportation facilities by industries, whether in corporate form or not, and the performance of transportation services by the use of such facilities, was as we have shown, not prohibited, but was expressly regulated and thereby was authorized.

To summarize:

(1) The assertion of the Government that the mere holding of stock by a holding company involves the surrender to the holding company of the entire conduct of the affairs of the subsidiaries, and their abdication of all independent corporate action as a matter of law, is proven to be false as a matter of fact in the instant case:

> "The primary business of defendant is that of a common carrier. Its other acts and transactions were incidental to its primary business of transportation. The United States Steel Corporation never took any part in transporting any commodities over the railroad of the defendant or in operating or in managing the operation of defendant's railroad or of any of the facilities of such operations or gave any directions or exercised any control over the transportation conducted over the railroad of defendant or took any part in any of the transactions between the defendant and the shippers over its railroad." [Finding 2, R. 497.]

(2) This case is founded on a Statute and nothing else.

(3) The Congress, after careful consideration, expressly excluded what the Government now asserts it included,—the precise situation involved in the *Delaware & Hudson* case. The Tillman amendment would have expressly covered the holding company situation. It was rejected.

(4) The Commodities Clause was not intended to provide a broad general rule covering the relations between transportation and industry, but was limited not only by what it expressly said, but as well by what it expressly excluded, and by express provisions of regulation in lieu of prohibition.

(5) Though the holding company may be used as a device to violate or evade the law, the fact of such violation or evasion must be established,—certainly when the case is not within the terms of the Act.

The Government's real reliance is on *U. S. v. Reading Co.* (263 U. S. 26) which we now discuss, first pointing out that the prior decisions of this Court already considered were expressly approved and reaffirmed, and indeed were made the basis of the decision in the *Reading* case. It is also to be observed that disregarding form for substance and reality, the fundamental distinction between the *Reading* case and the instant case is that the *Reading* case involved the very evils sought to be prohibited by the Commodities Clause, a railroad in fact attempting to monopolize the coal business in a particular field through the device of a holding company owning the stock of the railroad and the coal company, a device employed, as the Court found, to evade the Anti-Trust laws

and to accomplish the purpose prohibited by the Commodities Clause, wherefore the illegal combination was dissolved. The instant case involves no such element. The combination is not illegal. The Appellee was acquired to serve a legitimate economic purpose. The corporate set-up was not a device to evade or violate any law. The ownership of the stock of the Appellee has not been used to accomplish the purpose prohibited by the Commodities Clause. The United States Steel Corporation is not even a party to the suit which is one to enjoin the railroad not to dissolve an illegal combination.

The Reading Case.

United States v. Reading Company, 253 U. S. 26, decided April 26, 1920.

(1) Facts in the Reading case as compared with the facts in the instant case.

The points of similarity between the *Reading* case and the present case against the Elgin, Joliet and Eastern Railway Company are these:

The Reading Company was a holding company. It owned the stock of a railroad company. It also owned the stock of a coal company. The railroad company transported coal produced by the coal company.

The United States Steel Corporation is a holding company. It owns the stock of the Elgin, Joliet and Eastern Railway Company. It owns the stock of several companies producing articles of steel of various kinds. The Elgin, Joliet and Eastern Railway Company transports commodities produced by these subsidiaries of the Steel Corporation.

At this point, however, the similarity between the two cases ends. Further examination of the case will reveal these differences:

(a) In the *Reading* case the holding company acquired in the reorganization all the equipment, engines, cars and ships and the tidewater terminals formerly owned by the railroad company, thus enabling it to control the common carrier service and disabling the railroad from performing such service without its aid. In respect of that the Court said (p. 46):

> "* * * by the plan of reorganization adopted it was disabled from performing its functions as a carrier, except with the aid of the Holding Company, for all of the equipment, engines, cars and ships, owned by the former Railroad Company, and its tidewater terminals at Philadelphia and on New York Harbor, were allotted to the Holding Company."

In the instant case, there is nothing of that sort. On the contrary, the Defendant railroad not only owns and has greatly improved all the property that it ever owned, but to enable it more efficiently to perform its common carrier service has acquired through lease the property of the Chicago, Lake Shore and Eastern Railway Company, a subsidiary of the Illinois Steel Company.

(b) In the *Reading* case the properties of the holding company, the coal company and all of the railway were combined under a mortgage for $135,000,000.

In the instant case, the properties of the Defendant railroad have been kept entirely separate and distinct from the properties of the holding company and its other subsidiaries.

(c) In the *Reading* case the railroad company paid no dividends, but the earnings of the railroad company and the coal company were commingled with the earnings of the holding company which, as the court said, "served to pool the property, the activities and the profits of the three companies." (253 U. S. 48).

In the instant case, there has been no commingling of earnings whatsoever and the holding company has received nothing from the railway company except by way of dividends, which is the normal method by which a stockholder receives a distribution of earnings.

(d) In the *Reading* case the holding company, not the railroad, entered into a combination with five other anthracite-carrying rai[illegible] to prevent the construction of an independent and competing railroad known as the New York, Wyoming & Western Railroad.

In the instant case, there is nothing of that sort.

(e) In the *Reading* case, the coal company, the holding company and the railroad company had the same officers, directors and managers and were operated as one concern. With respect to that the Court said (253 U. S. 61-62):

> "All three of the Reading companies had the same officers and directors and it was under their authority that the mines were worked and the railroad operated, and they exercised that authority in the one case in precisely the same character as in the other—as officials of the Holding Company. The manner in which the stock of the three was held resulted, and was intended to result, in the abdication of all independent corporate action by both the Railway Company and the Coal Company, involving as it did the surrender to the Holding Company of the entire

conduct of their affairs. *It would be to subordinate reality to legal form to hold that the coal mined by the Coal Company, under direction of the Holding Company's officials, was not produced by the same 'authority' that operated the Reading Railway lines.*" (Italics ours.)

In the instant case the railroad is managed and operated by and under the authority of its own officers and managers, none of whom are in any way connected with the holding company or any of its subsidiaries.

(2) Issues in the Reading case as compared with the issues in the instant case.

The *Reading* case was brought by the United States against the Reading Company (a holding company holding the stock of a railroad company and the stock of a coal company) and against the railroad company and the coal company (253 U. S. 41). The remedy prayed for was that the combination of the holding company, the railroad company and the coal company be dissolved with a provision for disposing of the shares of the stock held by the holding company in the other companies (253 U. S. 64). The suit was based upon the claim that the Sherman Anti-Trust Act and also the Commodities Clause were being violated (253 U. S. 41).

In contrast it will be noted that in the instant case, although the United States Steel Corporation owns the stock of the Elgin, Joliet and Eastern Railway Company, and the stock of subsidiary producing companies, only the Elgin, Joliet and Eastern Railway Company is made a party. The prayer is that the Elgin, Joliet and Eastern Railway Company be restrained from transporting commodities produced, etc., by itself or by the subsidiaries of the Steel Corporation.

(3) The finding and the decree in the Reading case.

Let us recur to the statement of the Supreme Court (*United States v. Delaware & Hudson Co.*, 213 U. S. 366, 409) that the Commodities Clause contained four generic prohibitions forbidding a railroad from transporting commodities—(1) which it had manufactured or produced, (2) which have been so mined, manufactured or produced under its *authority*, (3) which it owns in whole or in part, and (4) in which it has an interest, direct or indirect (this Brief, p. 2). The *Reading* case concerned itself with the second proposition and disregarded the others.

The court held that the coal in that case

> "was mined and produced under the same '*authority*' that transported it over the railroad. All three of the Reading companies had the same officers and directors and it was under their *authority* that the mines were worked and the railroad operated, and they exercised that *authority* in the one case in precisely the same character as in the other—as officials of the Holding Company. * * * It would be to subordinate reality to legal form to hold that the coal mined by the Coal Company, under direction of the Holding Company's officials, was not produced by the same '*authority*' that operated the Reading Railway lines." (Italics ours.)

Having held that the coal was mined under the "*authority*" of the holding company and that it was transported under the "*authority*" of the holding company, the court decreed that the combination of the holding company, the railroad company and the coal company be dissolved, with provision for disposing of the shares of the stock held by the holding company in the other companies (253 U. S. 64).

(4) The Reading case did not hold that the ownership by a holding company of the stock of the railroad company and the stock of the coal company brought the case within the Commodities Clause.

The language of the opinion which must be construed in this connection is as follows (253 U. S. 60):

> "The Circuit Judges centering their attention: upon the fact that the Reading Railway Company did not own any of the stock of the Reading Coal Company; that the two companies had separate forces of operatives and separate accounting systems; and upon the importance of maintaining 'the theory of separate corporate entity' as a legal doctrine, concluded, upon the authority of *United States v. Delaware & Hudson Co.*, 213 U. S. 366, 413, that the evidence did not justify holding that in transporting the products of the Reading Coal Company's mines to market the Reading Railway Company was carrying a commodity 'mined, or produced by it, or under its authority' or which it owned 'in whole, or in part,' or in which it had "any interest direct or indirect.'
>
> "But the question which we have presented by this branch of the case is not the technical one of whether ownership by a railroad company of stock in a coal company renders it unlawful for the former to carry the product of the latter, for here the railroad company did not own any of the stock of the coal company. The real question is whether combining in a single corporation the ownership of all the stock of a carrier and all of the stock of a coal company results* in such community of interest or title in the product of the latter as to bring the case within the scope of the provisions of the act."

There are many reasons which demonstrate conclusively that the Court, by this language, did not mean that the

mere holding by the holding company of the stock of the railroad company and the stock of the coal company alone, without accompanying facts such as were considered by the Court in the *Lehigh* case (220 U. S. 257), brought the case within the Commodities Clause.

We submit that that question should be read as though the phrase "under the facts of this case" were inserted after the word "results"* since, after stating the question the Court proceeded to answer it by showing that in fact the manner in which the stock was held had resulted "in the abdication of all independent corporate action by both the railroad company and the coal company" and "the surrender to the holding company of the entire conduct of their affairs", and to the coal being mined "by the same authority that operated the railway lines." The evidence is undisputed in this case that no one connected with the United States Steel Corporation does anything or takes any part whatever in the operation of the E. J. & E. R. R., and the District Court so found. [Finding 2, R. 497.]

By posing a question the Court could not have intended to overrule what it had previously decided, especially in the *Lackawanna* case, which directly involved the question whether the particular manner of stock-holding here involved *ipso facto* brought the case within the Statute.

(a) The *Hudson* case.

In the case of *United States v. Delaware & Hudson Co.*, 213 U. S. 366, the Supreme Court specifically held that where a railroad company owns the stock of a coal company and transports the coal produced by the coal company, it does not come within the Commodities Clause; that in order for a railroad company to come within the Commodities Clause it must have an interest which is of

a legal or equitable character in the coal transported, and that the mere ownership of the stock of a coal company does not give it such an interest.

(b) The *Lehigh* case.

In the case of *United States v. Lehigh Valley Railroad Company*, 220 U. S. 257, the Supreme Court adopted the decision of the *Hudson* case but held that if a railroad company owns all of the stock of a coal company and then so manages and operates the business of the coal company as to wipe out all distinction between the two corporate entities and "make the affairs of the railroad company and of the coal company practically indistinguishable and therefore to cause both corporations to be one for all purposes," then the railroad company does come within the Commodities Clause (220 U. S. 272). As has been said before, this case furnishes the test when the railroad company does not literally produce, etc., the coal which it transports, and when, notwithstanding such fact, it is claimed that it comes within the Commodities Clause.

(c) The *Lackawanna* case.

In the case of the *United States v. Delaware, Lackawanna & Western Railroad Company*, 238 U. S. 516, *the Supreme Court passed upon the exact question now under consideration. It held that when the stock of a railroad company and the stock of a coal company were united in one holding, this does not bring the case within the Commodities Clause.* The court held in that case that the railroad company did come within the Commodities Clause but because, and only because, of a contract between the railroad company and the coal company by which, under the theory announced in the *Lehigh* case, the distinction

between the corporate entities of the two companies was destroyed and the two were made one and inseparable.

(d) The Supreme Court in the *Reading* case, in considering one of the groups of companies involved, cited the *Hudson* case, the *Lehigh* case and the *Lackawanna* case, all as the foundation upon which it based its decision. It then said (p. 62):

> "It results that it may confidently be stated that the law upon this subject now is, that while the ownership by a railroad company of shares of the capital stock of a mining company does not necessarily create an identity of corporate interest between the two such as to render it unlawful under the commodities clause for the railroad company to transport in interstate commerce the products of such mining company, yet where such ownership of stock is resorted to, not for the purpose of participating in the affairs of the corporation in which it is held in the manner normal and usual with stockholders, but for the purpose of making it a mere agent, or instrumentality or department of another company, the courts will look through the forms to the realities of the relation between the companies as if the corporate agency did not exist and will deal with them as the justice of the case may rquire. *United States v. Lehigh Valley R. R. Co.*, 220 U. S. 257, 272, 273; *United States v. Delaware, Lackawanna & Western R. R. Co.*, 238 U. S. 516, 529; *Chicago, Milwaukee & St. Paul Ry. Co. v. Minneapolis Civic & Commerce Association*, 247 U. S. 490, 501."

Here is a clear and forceful recognition of the distinction on the one side between a railroad company holding the stock in a producing company (213 U. S. 366) and also the union of the stock of a railroad company and the

stock of a producing company in one holding (238 U. S. 516), and on the other side the domination by a parent corporation over the business of the subsidiary to such an extent as to wipe out the distinction between the corporate entities and make them one and inseparable (238 U. S. 516).

(e) To hold on the one side that a railroad company owning the stock of an industrial company does not come within the Commodities Clause, and then to hold on the other side that a holding company owning the stock of a railroad company and the stock of a producing company does come within the Commodities Clause, is to make the question turn upon a mere form. There is no reason in it. The *Reading* decision is very emphatic that it is the duty of the court in such cases to look through the form to the substance.

(f) As has been shown above, when the Commodities Clause was pending in Congress an amendment was offered which would have made the clause apply to the case of a railroad company whose stock is held by a holding company, which holding company also holds the stock of a producing company, but it was rejected. And we have the authority of this Court in the case of *United States v. Delaware & Hudson Co.*, 213 U. S. 366, 414, and in the case of *United States v. Delaware, Lackawanna & Western Railroad Company*, 238 U. S. 516, 526, that such action by Congress is conclusive in the construction of this Statute.

(g) Proceeding in the discussion, the Court in the *Reading* case said (p. 60):

> "The purpose of the commodity clause was to put an end to the injustice to the shipping public, which

> experience had shown to result from discriminations of various kinds, which inevitably grew up where a railroad company occupied the inconsistent positions of carrier and shipper."

But clearly Congress had the right to determine the method which it should adopt to prevent such discriminations. It must be kept in mind that Congress adopted two remedies. By the Commodities Clause it prohibited a railroad company from transporting commodities produced, etc., by such railroad company; by the Regulatory Section it conveyed to the Interstate Commerce Commission the duty of regulating and fixing charges when a producing company shipped its commodities over a railroad in which it had an interest.

(5) In the Reading case, it was the control exercised by the holding company over the railroad company and over the coal company, destroying the distinction between the corporate entities and making them all one and inseparable, which the court held brought the case within the Commodities Clause.

The domination and control of the holding company over the railroad company and the coal company was very complete. It was not confined to the internal affairs of the corporations but extended to the conduct of the railroad transportation business and of the coal business. The holding company "continued in *active dominating control* of the Reading Railway Company and of the competing Central Railroad system, and also of the two coal companies, thus effectually suppressing all competition between the four companies and pooling their earnings" (59). The domination of the holding company created "unlawful discriminations against outside shippers of coal over the rails of these two (railroad) companies" and "unusual

credits had been allowed the latter (the Coal Company) in the payment of its freight bills" (a violation of the Interstate Commerce Act) (54). "All three of the Reading companies had the same officers and directors and it was under their authority that the mines were worked and the railroad operated" (61). The plan of a holding company holding the stock of the railroad company and the stock of the coal company was adopted "for the purpose of evading the provisions of the Constitution of Pennsylvania and the provisions of the Federal Anti-Trust Act" (56, 57).

The language of the opinion which must be construed in this connection is as follows (61):

> "In terms the act declares that it shall be unlawful for any railroad company to transport in interstate commerce 'any article or commodity . . . mined, or produced by it, or under its authority, or which it may own in whole, or in part, or in which it may have any interest, direct or indirect.'
>
> "Accepting the risk of obscuring the obvious by discussing it, and without splitting hairs as to where the naked legal title to the coal would be when in transit, we may be sure that it was mined and produced under the same 'authority' that transported it over the railroad. All three of the Reading companies had the same officers and directors and it was under their authority that the mines were worked and the railroad operated, and they exercised that authority in the one case in precisely the same character as in the other—as officials of the Holding Company. The manner in which the stock of the three was held resulted, and was intended to result, in the abdication of all independent corporate action by both the Railway Company and the Coal Com-

pany, involving as it did the surrender to the Holding Company of the entire conduct of their affairs. It would be to subordinate reality to legal form to hold that the coal mined by the Coal Company, under direction of the Holding Company's officials, was not produced by the same 'authority' that operated the Reading Railway lines. The case falls clearly within the scope of the act, and for the violation of this commodity clause, as well as for its violation of the Anti-Trust Act, the combination between the Reading Railway Company and the Reading Coal Company must be dissolved."

The facts found by the Court and involved in this argumentative statement are as follows:

1. All three of the Reading companies, that is, the holding company, the railroad company and the coal company, had the same officers and directors.

2. The mines of the coal company were worked and the railroad of the railroad company was operated under the authority of the said officers and directors.

3. These officers and directors exercised their authority as officers of the holding company.

4. Both the railroad company and the coal company *abdicated all independent corporate action.*

5. Both the railroad company and the coal company *surrendered to the holding company the entire conduct of their affairs.*

When the Court said that "The manner in which the stock of the three was held resulted, and was intended to result, in the abdication of all independent corporate action by the Railway Company and the Coal Company, involving as it did the surrender to the Holding Company of the entire conduct of their affairs" the Court did not mean and could not have meant that the holding by the holding company of the stock of the two other companies alone, and with no other aid, produced in mathematical sequence the "abdication" by both the other companies "of all independent corporate action" and the "surrender" by such other companies "of the entire conduct of their affairs." *It is perfectly apparent that if the holding company had done nothing but acquire the stock of the other two companies, the effect mentioned could not have resulted.* To produce the effect referred to required necessarily the further action by the officers and directors of the holding company in taking over the working of the mines and the operating of the railroad. The holding of the stock of the railroad company and of the mining company by the holding company resulted in the abdication and surrender by the latter companies of the conduct of their affairs only in the sense that such ownership of the stock *rendered possible,* through the election of directors and officers, complete control of the subsidiaries and that such power was then so exercised as to result in the abdication and surrender by the subsidiaries of the conduct of their affairs.

In this connection it must be kept in mind constantly that the officers of the holding company were the managing officers of the coal company and were the managing officers of the railroad company and *that the mines were worked and the railroad operated under their authority.*

Very clearly the Court meant by the language quoted just what it meant in the *Lehigh* case (220 U. S. 257, 273, 274) when, in answer to the argument that a railroad could not come within the statute when it held stock in a producing company whose product it transported, it said:

> "The error, however, lies in disregarding the fact that the allegations of the amended bill asserted the existence of a control by the railroad company over the coal corporation and its product, rendered possible, it is true, by the ownership of stock, but which was not the necessary result of a *bona fide* exercise of such ownership and which could only have arisen through the use by the railroad of its stock ownership for the purpose of giving it, the railroad company, as a corporation for its own corporate purposes, complete power over the affairs of the coal company, just as if the coal company were a mere department of the railroad. Indeed, such a situation could not have existed had the fact that the two corporations were separate and distinct legal entities been regarded in the administration of the affairs of the coal company. . . . In view of the express prohibitions of the commodities clause, it must be held that while the right of a railroad company as a stockholder to use its stock ownership for the purposes of a *bona fide*

> separate administration of the affairs of a corporation in which it has a stock interest may not be denied, the use of such stock ownership in substance for the purpose of destroying the entity of a producing, etc., corporation and of commingling its affairs in administration with the affairs of the railroad company, so as to make the two corporations virtually one, brings the railroad company so voluntarily acting as to such producing, etc., corporation within the prohibitions of the commodities clause. In other words, that by operation and effect of the commodities clause there is a duty cast upon a railroad company proposing to carry in interstate commerce the product of a producing, etc., corporation in which it has a stock interest not to abuse such power so as virtually to do by indirection that which the commodities clause prohibits, a duty which plainly would be violated by the unnecessary commingling of the affairs of the producing company with its own, so as to cause them to be one and inseparable."

That the Court used the words quoted in the sense above stated is further made manifest by what the Court said only two pages later.

The Court on page 62 "confidently" stated what "the law upon this subject now is." In there stating what "the law upon this subject now is" the Court said that "ownership by a railroad company of shares of the capital stock of a mining company does not necessarily create an identity of corporate interest between the two such as to render it unlawful under the commodities clause for the

railroad company to transport in interstate commerce the products of such mining company." And the Court further stated that the result only followed when such ownership of stock was resorted to "not for the purpose of participating in the affairs of the corporation in which it is held in a manner normal and usual with stockholders, but *for the purpose of making it a mere agent, or instrumentality or department of another company.*"

Further, it will be remembered that the Court, in stating that understanding of the law, based its opinion on its own decisions in the *Hudson* case, 213 U. S. 366; the *Lehigh* case, 220 U. S. 257, 273, and the *Lackawanna* case, 238 U. S. 516, 529.

This Court, having established and steadily adhered to the proposition that for the purposes of the Commodities Clause the ownership by a railroad company of the stock of a producing company whose products it transports does not destroy the distinction between the two legal entities, it could not have intended to say that the holding by a holding company of the stock of a railroad company and the stock of a coal company alone and without any other facts, destroyed the distinction between the three legal entities. If the holding by one company of all of the stock in another company does not destroy the distinction between the two legal entities, then the holding by one company of all of the stock of each of two other companies *cannot* destroy the distinction between the three legal entities or any of them. And so this Court had held in the *Lackawanna* case (238 U. S. 527), cited, approved

and adopted in the *Reading* case, when the Court, after citing the doctrine that when a railroad company owns the stock of a coal company it does not come within the statutes stated, "for a stronger reason, it would not necessarily be illegal for the road to transport coal belonging to a corporation whose stock was held by those who owned the stock of the railroad company."

(6) The Reading case is not applicable to the instant case.

Reduced to its simplest terms, the *Reading* case was this: A railroad company, and a coal company, and a holding company owning the stock of the other two, were sued. The Court ordered the dissolution of the combination and the disposition by the holding company of the stock it held in its subsidiaries, because the companies were violating the anti-trust laws and because the holding company was so exercising its power over its subsidiaries that they abdicated all independent corporate action and surrendered to the holding company the entire conduct of their affairs, thereby bringing the holding company within one part of the Commodities Clause.

It is apparent that the *Reading* case can have no application to the instant case—a case in which a railroad company is the only defendant and in which it is not claimed that that defendant did *in fact* any of the things made unlawful by the Commodities Clause or that it dominated or controlled to even the slightest extent any producing company.

III.

Answering the Government's Point II, the Facts Discussed Under This Point Are Irrelevant to Any Issue in the Case and the Ultimate Facts Have Been Found Contrary to the Government's Contentions.

We start the discussion under this head with the fact found and not now disputed that the separate corporate entity of the Appellee has not been destroyed, obstructed or interfered with in any way by the United States Steel Corporation [Findings 2, 3, R. 497].

None of the matters discussed under this point by the Government has anything to do with the operation of its railroad by the Appellee. The District Court found that that was attended to exclusively by the Appellee through its own officers and employees, and that the United States Steel Corporation took no part in it whatsoever. [Findings 2, 8, 9, 10, R. 497, 498.] That is in accordance with the undisputed evidence. [R. 120, 62, 63, 36.] Government counsel evidently appreciate that they have gone far afield under this point since they select four of the many matters discussed and say on page 45 of the brief, "Clearly these matters have directly to do with the Appellants common carrier functions."

The four matters referred to are:

(1) Appropriations for capital expenditures are submitted to the United States Steel Corporation for approval after they have been decided upon by the officials of the Appellee. [R. 37.] The Government brief erroneously says, "The Steel Corporation decides, except in the case of negligible expenditures, whether Appellee shall make improvements to its road."

(2) The Appellee deposits, from time to time, portions of its surplus earnings with the United States Steel Corporation, subject to call, the same as it makes deposits in a bank [R. 34], on which it receives interest. [R. 54.] The Government brief erroneously says of this, "It draws into its control Appellee's surplus funds."

(3) Judge Gary, Chairman of the Board, United States Steel Corporation, was consulted by Mr. Banks the President of the Appellee, on the subject of a proposed lease of the C. L. S. & E. R. R. Co. whose stock was owned by the Illinois Steel Company, by the Appellee. The actual bargain was negotiated between Mr. Banks, the President of the Appellee, and Mr. Buffington, the President of the Illinois Steel Co. [R. 61.] Judge Gary did not even discuss the matter until Mr. Banks and Mr. Buffington had made their bargain, and Mr. Knapp had approved it from the legal standpoint. [R. 135.] The Government says of this that the Steel Corporation decided whether the Appellee should make the lease.

(4) As stated in the Government brief, the Steel Corporation "participated in the negotiations respecting the agreement for trackage rights over the lines of the Chicago & Eastern Illinois Railroad Co." That participation, however, consisted solely of advice. [R. 32, 41.]

The Government, through the powers of the Interstate Commerce Commission, has been able to go through the Appellee's files and records and to examine into all of its business transactions covering the period of thirty years of ownership of its stock by the Steel Corporation prior to the commencement of the Government suit. The Ex-

hibits in evidence, including the correspondence over that period, are presumably all that could be found that was thought to aid the Government's case in any way. It is the strongest kind of negative evidence for the Appellee. It shows that the most scrupulous care was exercised to observe and respect the separate and independent administration of its affairs by the Appellee. It shows that in all the dealings between the Appellee and the United States Steel Corporation or its producing subsidiaries, the most scrupulous regard was paid to the rights of each of the parties, and that they dealt at arm's length, the officials of each company seeing to it that its rights and interests were protected. The above four matters constitute all that the Government even claims have anything to do with common carrier functions. Mr. Filbert, the Chairman of the Finance Committee of the United States Steel Corporation at the time of the trial, formerly its Comptroller, who had the most intimate knowledge of the transactions involved over the entire period of anyone connected with the corporation [R. 58] said that the two contracts above referred to, the C. L. S. & E. lease and the C. & E. I. trackage agreement, were the only two contracts made by the Appellee during the entire period that were even discussed with the officials of the Steel Corporation before they were made. [R. 62.] Surely the Appellee could consult its stockholders on such important matters as capital expenditures, the leasing of another railroad, of the acquisition of trackage rights over another railroad, without abdicating its own control over its own corporate action and without surrendering the entire conduct of its affairs. Likewise, it could deposit its surplus earnings, or a part of them, at interest, subject to withdrawals, without commingling its own affairs with

the affairs of the Steel Corporation. Moreover, neither of the said four matters had anything whatsoever to do with the manner in which the Appellee should operate its railroad or perform its transportation services.

The terms "agent," "instrumentality," "department" and "branch" are used throughout the Government brief, but just what the Government means by those terms is not plain. It certainly does not mean that the corporate entity of the Appellee has been obliterated so that the two corporations are one and indistinguishable, for that is no longer the claim.

It does not mean that the true relation of principal and agent exists or ever has existed between the Appellee and the United States Steel Corporation. There is not one single instance to be found in all of the evidence of the Appellee acting as agent of the United States Steel Corporation.

One corporation owning all the stock of another might so misuse its stock ownership as to destroy the separate administration of its affairs by the latter, and thus obliterate it as separate entity. In that case it would make itself responsible for what was done in the latter's name. That is no longer claimed in this case.

So, also, a corporation owning all of the stock of another might, without destroying the latter's corporate entity, so employ it as an agent as to make itself responsible for its acts. That has never been claimed in this case.

What, then, do the terms employed by the Government mean? Until they are given some definite meaning we must assume that they are employed to conceal confusion

of thought for want of any recognizable legal basis for the claim made.

The United States Steel Corporation certainly is not engaged in the transportation business—indeed, the Government maintains that it is not engaged in any business and that there is something sinister in the fact that it is merely a holding corporation. Of course, the Government does claim that because it is only a holding corporation it is engaged in all of the businesses of its subsidiaries, an obvious *non sequitur*. The Appellee does not perform its common carrier service as agent for anybody. The relations between it and its shippers, whether the producing subsidiaries of the United States Steel Corporation or other shippers, is that of carrier and shipper. It renders that service for all alike for its published tariff rates. It accounts to no one for what it receives. The United States Steel Corporation receives nothing from it ecept by way of dividends. [R. 56, 95.]

Though we maintain that the matters under consideration are all irrelevant, since they constitute the Government's case, we will now briefly discuss them in the order in which they are presented in the Government's brief:

(1) Interlocking directors.

There is no claim that there has ever been a common director since 1920, and the undisputed evidence is that there are no common directors, officers or employees. [R. 41.]

(2) Method of selecting appellee's officers and directors.

The "minor exceptions" of directors selected from officials or employees were the President of one bank and two Vice Presidents of another bank. [R. 47.] Certainly it is the function of the stockholders to select the directors, and the fact that the United States Steel Corporation left the administration of the affairs of the Appellee so completely to its management as even to give its proxy to the President of the Appellee [R. 30] would seem to be the exact opposite of domination and control.

(3) Declaration of dividends.

Dividends to be declared is again an appropriate matter to discuss with the stockholder. The record makes it plain that Mr. Banks both initially and ultimately decided on the dividend to recommend to the directors. He did consult Judge Gary and Mr. Filbert. In his own language Judge Gary would say, "If you think you can afford it, why, no objection to it that I know of." [R. 35.] When Mr. Banks and Mr. Filbert disagreed on one occasion as to the amount of a dividend to be declared, Mr. Banks held out and declared the dividend that he proposed just the same, which was larger than Mr. Filbert thought advisable. [R. 56.] From that incident, and many others appearing both in the testimony of Mr. Banks and the other witnesses, and the correspondence, the Court will easily be able to judge the sort of dominating personality possessed by Mr. Banks and to understand that the E. J. & E. R. R. under his presidency was not managed under anyone else's domination and control. The testimony of Mr. Scott Rogers, the present President [R. 77 and 119] is equally impressive on the point of the separate and inde-

pendent administration of the affairs of the Appellee. Men of such caliber are not selected to abdicate their functions or to be branch managers under central control.

(4) Directors' approval of contracts.

The Government alleged [R. 6] that the Steel Corporation requires all important contracts of the Appellee to be submitted to it, and that the terms of such contracts are generally prescribed by the officials of the Steel Corporation. Failing any such proof, the Government now makes a point of the fact that there was an annual blanket approval by the directors of the Appellee of all contracts. The evidence shows that contracts were never submitted to the officials of the United States Steel Corporation for approval in advance of their execution. [R. 121.]

(5) Location of offices and division counsel.

The reference to such matters indicates the straits to which the Government is reduced.

(6) Meetings of presidents.

Nothing was ever discussed at these meetings with relation to the operation and management of the railroad, and nothing in the nature of directions was given to the Appellee's President. [R. 119.]

(7) Control of capital expenditures.

Appropriations for capital expenditures in excess of $5,000 or $10,000 alone were submitted to the Steel Corporation. No expenditures for maintenance were submitted or so much as discussed. [R. 45.] Defendant's Exhibit 27 [R. 414] shows that from the years 1926 to

1930 inclusive the total expenditures, both for maintenance, operation and capital account were $88,363,371.38. Of that amount $3,153,817.36, or 3.57% was expended on capital account on the recommendation of the United States Steel Corporation, except, as frequently happened, the money was actually spent or the contracts for its expenditure entered into before the recommendation was given. [R. 34, 52, 123.] Certainly, a stockholder may be consulted to that extent on capital expenditures without a surrender or abdication by the subsidiary.

(8) Control of surplus funds; the advance account.

That caption is misleading. The United States Steel Corporation had no control of the surplus funds of the Appellee. The Government tries to spell out such control from the fact that the Appellee does deposit surplus funds from time to time with the Steel Corporation, the same as it would with a bank, and when it wishes to use the money, draws a draft, and the suggestion is that the Steel Corporation would not be obliged to honor the draft. Of course there was never an instance of a refusal to honor a draft. The United States Steel Corporation merely acts as a depositary. The relation of debtor and creditor is created. The corporation's own deposits in banks are always greatly in excess of any of the deposits of the Appellee, and the Steel Corporation paid interest to the Appellee in excess of the amount it itself received on its own bank deposits. [R. 60, 71.] The purpose of the deposit is plainly shown by the fact that during the depression, from January 1, 1930, to January 1, 1934, the deposit was reduced from approximately $12,200,000 to approximately $965,500 [R. 71], "to be used for the running expenses of the road."

(9) Control of the clearing of inter-subsidiary transactions.

This was a clearing device to save red tape and expense by which the Steel Corporation served as a clearing house for the settlement of accounts between subsidiaries, the correct balance being credited or debited as the facts might warrant. [R. 34.] It has nothing to do with transportation charges or traffic claims. [R. 59.] It serves to prove the complete separation of the affairs of each company from the others by using the clearance account. The subsidiaries, including the defendant, are not made agents, instrumentalities, departments or branches of the Steel Corporation any more than banks or brokerage houses, which employ similar methods, become thereby mere agents, instrumentalities, departments or branches.

(10) Bonus, pension and stock purchase plans.

The United States Steel Corporation does give to the Appellee's officers and employees an opportunity to purchase stock of the Steel Corporation upon a deferred payment plan. It does give the employees of the Appellee the benefit of a profit-sharing plan adopted by the stockholders of the Steel Corporation.

There is a Pension Fund owned and administered by a non-stock corporation, not a subsidiary of the Steel Corporation [R. 57], and additional sums are contributed to the earnings of that Pension Fund to make up an amount each year for the payment of pensions to the retired officers and employees of various subsidiaries of the United States Steel Corporation, including the Appellee, but the latter contributes whatever sum is needed for its own retired employees and officers in addition to

the amount received for them from the earnings of the Pension Fund. [R. 57.]

Surely, these are all appropriate matters to consult the stockholder or stockholders about, and the laws of many States require the approval of the stockholders on such matters.

(11) Reports, budget estimates, intersubsidiary purchases and bank accounts.

It is true that certain reports, budget estimates and copies of contracts are submitted to the Steel Corporation solely to the end that it may be informed of the activities of its subsidiaries, not, as the Government says, so that it may supervise the activities of the Appellee, but so that it may have information which is proper for a stockholder to have. No evidence of supervision is cited, and there is none. Copies of contracts are not furnished by the Appellee until after they have been entered into, and then only for statistical purposes. [R. 70-71.]

The statement on page 76 of the Government brief that purchases by the producing companies are supervised by the Purchasing Agents' Committee of the Steel Corporation is significant. There is no evidence and no claim of any supervision of the purchases made by the Appellee. The Government investigators, in combing the Appellee's records and files of thirty years, found a letter by Mr. Banks to Mr. Farrell complaining of an advance in the price of coal. He was evidently angry when he wrote the letter, and said some things which he had to admit were not so. [R. 102-103.] The Government says at page 75 that Mr. Banks repudiated the statements. They were to the effect that the railroad sold its scrap to the

Illinois Steel Company at a price fixed by the latter, although it could get a better price from outsiders, and it had no means of making savings either in sales or purchases.

It was conclusively established by uncontradicted evidence that it made its purchases in its own discretion and solely in its own interest, even buying coal from independent mines on its line to keep them going, so as to get their traffic, although it was able to buy a uniform high grade coal in solid trainloads from subsidiaries of the Steel Corporation at lower prices. [R. 415, 73-74, 97-98.] It was also likewise established that the Appellee sold its scrap to the Illinois Steel Company or outsiders, depending entirely on which offered the best price. [R. 99.]

The purchase of coal and the sale of scrap are but two of the very many incidents relied on by the Government, which, when the facts are understood, demonstrate the complete independence with which the affairs of the Appellee are administered in its own interest.

As to the supervision of bank depositaries or bank balances, the undisputed evidence is that the Steel Corporation exercises none whatsoever. [R. 54-55.] The most that it does is to advise when it's advice is asked as to the safety of particular depositaries, since it is in a better position to judge. [*Id.*] That again serves to demonstrate the absolute separate and independent administration of its affairs by the Appellee. If it were a mere branch, department, instrumentality or agent, it would receive directions. It would not seek advice, as it might seek it from anyone.

(12) Trackage agreement with the Chicago and Eastern Illinois Railway Company.

This matter was obviously introduced for the sole purpose of creating atmosphere, since it is irrelevant to any issue in the case. As stated in the Government brief on page 79, the C. L. S. & E. R. R. Co. which leased its road to the Appellee in 1909, had a trackage agreement with the C. & E. I. R. R. Co. (not a Steel Corporation subsidiary), whose terms were presumably satisfactory to both parties. In 1922, being in receivership, the C. & E. I. R. R. Co. was able to disaffirm its contract. It did so, and demanded a higher rental on the ground that its labor and other expenses had greatly increased. A new agreement was negotiated between Mr. Banks and Mr. Jackson representing the C. & E. I. R. R. Co. [R. 40, 41.] Naturally, each tried to make as good a bargain as he could. This was one of the two contracts negotiated by Mr. Banks over a period of thirty years, on which he consulted Judge Gary before the contract was closed. [R. 62.]

So far from showing domination and control by the Steel Corporation, this transaction demonstrates the contrary.

The C. & E. I. succeeded in getting an increased rental of 2¢ a ton. [R. 41.] There is nothing to show whether the new rental was fair or not, but that is wholly immaterial. Under it the Appellee had the entire haul and paid the C. & E. I. rental for the use of its tracks. There is nothing in the record to show the cost of operating the trains. Without an agreement, if the traffic had moved over the same route, each of the parties would have received for its part of the haul a division of the rate. There is nothing to show how the results to the Appellee

under the two methods would have compared. Judge Gary's only part in the transaction was to advise Mr. Banks that if it was more convenient for him to remain as he was, he better pay the increased rental demanded, rather than to transfer to the Terre Haute [R. 41], although the latter was willing to give trackage rights for what the C. & E. I. had theretofore been receiving. [R. 40, 41.]

(13) Lease of the Chicago, Lake Shore and Eastern Railroad Company.

This matter has as little relevancy as the last, and is obviously introduced for the same purpose. This was the other of the two contracts made over a period of thirty years, that was discussed with the officials of the Steel Corporation before it was executed. [R. 62.] We again emphasize the fact that Judge Gary, who had been opposed to making the lease on legal grounds, on grounds of policy, and "also justice between the different parties," would not discuss the matter at all until the Presidents of the companies involved had agreed and counsel had approved. [R. 135.]

The Government's purpose is to insinuate that the C. L. S. & E. had been receiving divisions in excess of what it should have received for the services rendered. So the Interstate Commerce Commission had said in its *ex parte* report made in 1904. In its report to the Congress in 1905, submitting what became known as the Hepburn Bill, it asked for jurisdiction over such matters. The Congress gave it by Section 15 (13) of the Act at the same time that it passed Section 1 (8), the Commodities Clause. The lease to the Appellee was not made until

June 1, 1909, three years later. [R. 365.] Thereupon, of course, the rates and divisions of the Appellee became the rates and divisions for the entire system operated by it. The former rates and divisions of the C. L. S. & E. were superseded. If they had been excessive, that was the fault of the Interstate Commerce Commission certainly after the passage of said Section 15 (13) of the Interstate Commerce Act in 1906. The question whether they had been excessive or not is not now before this Court and has no relevancy to any question in the case. The Appellee was in no way involved, and it would be of no importance in this case even if it had been. In its special report to the Congress in 1915, quoted at page 30, *supra*, the Interstate Commerce Commission said:

> "The Commission comes into constant contact with the records and accounts of railroads and other public carriers through its Examiners of Accounts, and has reason to believe that there is no basis for the allegation that wholesale rebates have been paid to the Steel Corporation during the period of six years mentioned in the resolution."

The complete answer to all that the Government has to say under this head is that if the C. L. S. & E. received divisions and allowances in excess of the value of the services rendered, the Interstate Commerce Commission had authority to determine "what is a reasonable charge." (Sec. 15 (13).) So far from indicating that the case is within the Commodities Clause, it proves the contrary.

Conclusion.

This case is founded on a Statute. That Statute is directed toward the manner in which common carriers perform their common carrier functions. It is not directed in any way to such matters as election of officers, declaration of dividends, or reports made to stockholders, or any similar matters. The evidence and the findings show that the Appellee in this case has managed its business, and has performed all of its functions bringing it into relation with the public, not only independently, but in a manner in strict conformity with the law.

Yet the Government is asking that this Court draw a conclusion from the incidents we have briefly referred to above, directly contrary to the conclusion of the District Court when that Court said:

> "But no single piece of evidence taken alone, nor all taken together and considered as a whole, warrant the inference that the defendant, and the producing and manufacturing subsidiaries are under the domination, control, direction and management of the Steel Corporation in the sense that the defendant and the other subsidiaries are mere departments, branches, adjuncts and instrumentalities of the Steel Corporation. The evidence fails to show that the defendant had any interest, direct or indirect, legal or equitable, in the articles or commodities which it transports for the subsidiaries of the Steel Corporation." [R. 511.]

IV.

Answering the Government's Point III, the Appellee Makes But Few If Any of the Contentions Which the Government Purports to Answer Under This Point.

The Appellee does not contend that it is not a railroad within the meaning of the Commodities Clause, or that industrial railroads are beyond the reach of the Commodities Clause.

The Appellee does contend that it did not mine, manufacture or produce the commodities transported by it, that they were not produced under its authority and that it does not own them or have any interest in them, direct or indirect.

The Appellee does not contend that Section 15 (13) is determinative of this case. It merely contends in that regard that it is very persuasive evidence, reenforcing what otherwise plainly appears, to show that the Commodities Clause was not intended to prohibit transportation by a railroad of the products of a proprietary industry.

We will discuss the sub-heads of the Government's Point III in the order stated:

A. Character of the Service

The Government says that Appellee is not an industrial or terminal railroad. Of course the case is not to be decided on terminology, but the Appellee is what the Interstate Commerce Commission defines an industrial railroad to be, *i. e.* "an incorporated or unincorporated railway controlled by some manufacturing or mining industry, the major portion of whose traffic is furnished

by the controlling company." The Commision said that there were 449 such roads "which derived revenue from divisions of through rates or allowances by carriers". (24th Annual Report of Interstate Commerce Commission, 1910, p. 33). To enjoy divisions of through rates such roads obviously must have a common carrier status.

The recommendation of the Commision in its 19th Annual Report of 1905 (p. 10) on which Section 15 (13) of the Hepburn Act was adopted, is headed "Terminal Roads, Elevator Charges and Private Cars."

Whether a railroad is a terminal road depends on the service it renders, not on the number of its employees or the amount of its equipment or on the number of trunk lines with which it connects. An interchange service between manufacturing plants and trunk lines is certainly a terminal service. The fact that the Appelle is a belt line around a great center connecting with all of the trunk lines entering it does not change the character of its service, or affect its status as a terminal road. We do not say that that permits it to violate the Commodities Clause, but we do say that the service performed by it is precisely the kind of service naturally to be performed for an owning industry, which the Statute was not intended to prohibit.

We agree that the Appellee is a common carrier—so were the 449 industrial railroads said by the Interstate Commerce Commission, as above stated, to be enjoying divisions of through rates. Whether it has an interest in the products transported by it does not depend on whether it conects with one or more trunk lines, or serves one or more manufacturing plants. To perform an interchange service between the trunk lines and manu-

facturing plants, like those of the Steel Corporation subsidiaries, about the City of Chicago, and to serve those who have the right to demand and receive its service, it must have adequate road and equipment to render the service, but it is in no different position with respect of its right to transport the products of a proprietary industry than it would be if it served but one plant and connected with but one trunk line. The question before the Court is to be decided on other grounds.

We do not say that the character of the service is determinative of the question at issue. The Congress made the ownership or interest of the railroad in the commodity transported the determinative question. All we say on that subject is that it is the kind of service that the framers of the Commodities Clause expected industrially owned railroads to perform for the owning industry. Whether the Pennsylvania Railroad, if owned by the Steel Corporation, could transport the products of the latter's producing subsidiaries is not before the Court. We think it could under the Statute as it now stands. No doubt the Congress took into consideration the kind of railroads likely to be owned by industrial companies, *i. e.* roads to reach the trunk lines, when it passed the Commodities law. If the Steel Corporation undertook to acquire the Pennsylvania Railroad now, the Congress would be likely to have something to say about it.

The Government says that by excepting "timber and the manufactured products thereof" the Congress intended to include all other products and that the Appellee is asking the Court to make another exception. Undoubtedly the Congress did intend to include all of

the products not excepted, and the Appellee is not asking this Court to extend the exceptions. By it the Congress enabled any railroad to engage in the lumber business, so this Court has said. (*Tap Line* Cases, 234 U. S. 34).

We do not say that the Appellee could engage in manufacturing and then could transport the products of its manufacture.

B. Manner of Appellee's Affiliation With Producing Subsidiaries.

Under this head the Government seems to have abandoned its Point I, for it says, (p. 116):

> "The Statute does not specify what constitutes an 'interest, direct or indirect'. It does not make 'interest, direct or indirect' turn upon stock ownership. It does not mention stock or stock ownership at all. * * * The decisions of this Court make it clear that stock ownership is not significant in and of itself in determining whether the forbidden interest exists."

On page 117, referring to the Commodities Clause cases in this Court, it says:

> "These cases do not turn upon stock ownership as such, but upon the factual relationship of the railroad company to the owner of the commodities."

It argues that the instant case will not be controlling in other cases, because each will have to be decided upon its own facts. It now concedes (p. 119):

> "In the case of a common carrier railroad company whose stock is owned by a producing company, mere stock ownership would not create the

forbidden interest in the commodities of the producing company."

Yet it contends that stock ownership one step removed from production brings the case within the Statute. It says that the Statute does not mention stock or stock ownership at all. Counsel evidently overlooked the fact that the rejected Tillman amendment did say something about stock ownership, and did make the "interest, direct or indirect" turn on stock ownership, either of a railroad in an industry, or of the industry or its owners in the railroad.

The Government says (p. 117) that this Court stated in the *Lackawanna* Case (238 U. S. 516, 528):

> "The common ownership by individuals of a substantial portion of the stock of a railroad company and of a producing company would not in and of itself create the requisite interest in the commodities of the producing company",

and that the forbidden interest that was found to exist in that case was not the result of stock ownership, but resulted from the sales contract. Quite true, but we say that this Court not only stated, but decided in that case that common ownership of stock of the railroad and the producing company did not in and of itself create the prohibited interest. The District Court had dismissed the bill on that precise ground. The common ownership of stock in that case resulted in a "common management" [*Id.* p. 526]. The same officers were elected for the coal company as for the railroad, and thus having a common management, entered into a contract which this Court decided gave the railroad an interest in the coal

transported, but that was because of the terms of the contract itself, and not because of the fact that it was entered into between two companies having a common ownership and a common management.

The Government seems to claim that there is a distinction between common ownership by individuals and a holding company, but the incidents of such common ownership, which it says necessarily results from the real nature of a holding company, was found to have existed in that case as a matter of fact. Yet this Court held that that did not bring the case within the Statute. Whereas, the fact in the instant case is that common management did not result from the ownership of the stock of the railroad and of the producing companies by the Steel Corporation. The management of the railroad was kept separate and distinct from that of the Steel Corporation itself and of its producing subsidiaries. That case involved a trunk line railroad.

Manufacturers R. Co. v. United States, (246 U. S. 457) involved a terminal railroad which was owned by the owners of an industry. The question of its right to divisions and allowances on proprietary traffic was involved. It was a smaller terminal railroad than the Appellee, but it served to connect an industry with the trunk lines. Apparently the Commodities Clause was not even referred to. The product involved was beer, not as in the *Tap Line* case, lumber.

After answering many of the Appellee's supposed contentions by maintaining that the case turns on the facts and not on stock ownership as such, the Government brief finally does swing back to its Point I, and it does state on page 117 that according to the *Reading* case, in the

Government's view the case is to be decided "not upon the fact of stock ownership as such, but upon the peculiar nature of a holding company, the very purpose and function of which is to reduce its subsidiaries to its mere agents, departments, or instrumentalities." In other words, in its last analysis the Government's case comes down to this, that as a matter of law, the purpose and function of a holding company is to reduce its subsidiaries to its mere agents, departments and instrumentalities.

The Congress has not yet so legislated, even if it have the Constitutional power to do so, and the findings in the instant case establish the contrary. In short, the Government asks this Court to hold, as a matter of law, that a situation exists which the evidence and the findings establish did not exist as a matter of fact.

The Appellee does not make the contention which the Government says was rejected by the Court in the *Delaware & Hudson* case, but in view of the fact that the Government now bases its case on the nature of a holding company, it is interesting to observe that as late as 1930 the Interstate Commerce Commission held it to be for a lawful purpose and compatible with the public interest for the Delaware & Hudson Railroad Co. and the Delaware & Hudson Coal Co. to change its corporate structure by transferring the railroad to a new company, thereby leaving the Delaware & Hudson Co. merely a holding oompany. (158 I. C. C. 615). In the same year it also held that it was for a lawful purpose and compatible with the public interest for the Upper Merion & Plymouth Railroad Co. to issue new stock to be sold at par to the Alan Wood Steel Co. which owned the stock of the railroad company and the stock of a coke company. (166 I. C. C. 351.)

C. Section 15 (13) of the Interstate Commerce Act.

Appellee has contended in this brief that the Commodities Clause prohibits a railroad company from transporting commodities (except lumber, etc.) when the commodities are "produced by it or under its authority, or which it may own, in whole or in part, or in which it may have an interest", and that no railroad company is prohibited by the Commodities Clause from transporting any commodity unless such commodity is produced, etc. by such railroad company. In other words, Appellee has contended that the meaning of the clause is to be determined from its language.

The Government, on the other hand, has contended that the Clause prohibits a railroad company from transporting commodities which it has not produced, etc. if the shipper of the commodities owns the commodities and owns the stock of the railroad company which transports them or at least if a holding company holds the stock of the railroad company and of the producing company.

Appellee has contended that to give the Commodities Clause the meaning asserted by the Government would make it prohibit what Section 15 (13) of the Interstate Commerce Act recognized as perfectly proper. The Commodities Clause and the regulatory section, Section 15 (13), having been passed at the same time and as a part of the same Act, the inference is obvious and very strong that the construction contended for by the Government cannot be the true construction.

The Government recognizes the persuasive force of the argument. It does not attempt to controvert the logic or the legal principle upon which Appellee relies. It at-

tempts to meet the argument by asserting that Section 15 (13) does not mean what the words of the Section convey, and what Appellee has construed it to mean.

For convenience we restate here Section 15 (13). It is as follows:

> "If the owner of property transported under this chapter directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality used therein, the charge and allowance therefor shall be no more than is just and reasonable, and the commission may, after hearing on a complaint or on its own initiative, determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the services so rendered or for the use of the instrumentality so furnished, and fix the same by appropriate order, which order shall have the same force and effect and be enforced in like manner as the orders above provided for under this section."

Appellee understands that Section 15 (13) gives to the Commission jurisdiction to determine what is a just and reasonable charge which a carrier should pay when a shipper furnishes any transportation services, and that this jurisdiction covers the service which a shipper furnishes when he supplies a switch track which connects his plant with a carrier; and also when he owns the stock of an incorporated common carrier which transports his shipments from his plant to another carrier.

The language of Section 15 (13) is amply broad to convey the power we have stated.

The Commission, when it reported to Congress an amendment to the Interstate Commerce Act, which was

adopted and became Section 15 (13), clearly intended that the section should have that meaning. This is made clear by the language in which the Commission recommended the adoption of the section (Commission's Annual Report for 1905, p. 10) referred to in Government's brief, page 122, and quoted more fully in this brief, page 19.

Finally, the true meaning and purpose of Section 15 (13) was determined more than twenty years ago in the case of *O'Keefe v. United States*, 240 U. S. 294.

The New Orleans, Texas & Mexico Railroad Co. operates directly and through stock ownership of other companies, a system of railroads extending from New Orleans, across the States of Louisiana and Texas (p. 298).

The Louisiana & Pacific Railway Co., incorporated under the laws of the State of Louisiana, owns and operates a Tap Line within that State, including about 80 miles of main and branch lines. It crosses and connects with the New Orleans, Texas & Mexico Railroad. It also connects with five other trunk lines (p. 298).

The Louisiana & Pacific is like the Elgin, Joliet & Eastern Railway Co. Located along its line are lumber mills, as steel mills are located along the line of the Elgin, Joliet & Eastern. The same interests own the lumber mills and the stock of the Louisiana & Texas, just as the United States Steel Corporation, through stock holdings, owns the steel mills along the line of the E. J. & E. and also the stock of the E. J. & E. (p. 298).

The Interstate Commerce Commission entered an order requiring the New Orleans, Texas & Mexico to reopen through routes and publish joint rates with the Louisiana

& Pacific. The order prohibited the New Orleans, Texas & Mexico from making an allowance or division to the Louisiana & Pacific out of the joint rate in excess of certain prescribed amounts (p. 295).

The amounts of allowances or divisions which the New Orleans, Texas & Mexico was permitted to make to the Louisiana & Pacific by the order were so small that the New Orleans, Texas & Mexico got none of the business of the Louisiana & Pacific. The Louisiana & Pacific could, under the terms of the order; exchange its traffic with other trunk lines with which it had connections, and get greater allowances or divisions than it could get from the New Orleans, Texas & Mexico (pp. 299, 300). Therefore, O'Keefe, the Receiver of the New Orleans, Texas & Mexico filed a bill to annul the order of the Commission (p. 295) on the ground that the Commission was without power to prescribe the maximum divisions, as was done by the order referred to (p. 300).

The Court held that the Commission clearly had the jurisdiction to make the order (p. 302). The Court quoted Section 15 (13) as giving the Commission the authority to make the order, and then said:

> "In the case of 234 U. S. 1, this court did not ignore, but fully recognized the significance of the community of interest between the lumber company and the tap line. It was pointed out (p. 27) that timber and its manufactured products were exempted from the absolute prohibition of the commodity clause of the Hepburn act (of June 29, 1906, chap. 3591, 34 Stat. at L. 584, 585, Comp. Stat. 1913, sec. 8563). But this was regarded as one of the circumstances rendering it important that the Commission should deal with the abuses found to exist

in the division of joint rates with the tap lines, not by abolishing them altogether, but by 'reducing the amount so that a tap line shall receive just compensation only for what it actually does.' So, in Interstate Commerce Commission v. Diffenbaugh, 222 U. S. 42, 46, 56 L. ed. 83, 87, 32 Sup. Ct. Rep. 22, the court said: 'The act of Congress in terms contemplates that if the carrier receives services from an owner of property transported, or uses instrumentalities furnished by the latter, he shall pay for them. That is taken for granted in sec. 15: the only restriction being that he shall pay no more than is reasonable, and the only permissive element being that the Commission may determine the maximum.' Again, in Ellis v. Interstate Commerce Commission, 237 U. S. 434, 445, 59 L. ed. 1036, 1041, 35 Sup. Ct. Rep. 645, it was said: 'The intervening corporation may be a means by which an owner of property transported indirectly renders the services in question, and in that event its charges are subject to the Commission by sec. 15.'"

That case was decided in 1915. Sub-section 13 was the only provision of Section 15 under which the order could have been made. The Act of 1920 for the first time empowered the Commission generally to establish divisions between carriers on complaint or on its own initiative. The first part of the Section (1) which the Court quoted did not provide for divisions of rates as between carriers but only for the case where the rate whether "individual or joint" was found to be unjust, etc.

In the *Manufacturers Railway Co. v. United States* (246 U. S. 457) decided in 1917 this Court in reviewing an order requiring the trunk lines to re-establish divisions

with an industrial common carrier said it might have dealt with divisions in the same order, citing the *O'Keefe* case. (p. 480.)

It is true that the Commission has not always been consistent. As this Court said in *I. C. C. v. Diffenbaugh*, (222 U. S. 42, 45), after the passage of the Act of 1906, "the Interstate Commerce Commission had begun to change its view upon further reflection." Indeed, it seems to have changed its mind a number of times. It has often said that Section 15 (13) authorized switching allowances to the shipper only, but in practice it has more often approved of divisions with industrially owned common carriers. (See *supra* p. 32.) It has attempted to treat such common carriers as mere plant facilities, but this Court decided in the *Tap Line Cases* (234 U. S. 1), that a common carrier for one purpose was a common carrier for all purposes.

It has tried to make a distinction between divisions and allowances which this Court in the Manufacturing Ry. Co. just above cited referred to as "abstruse distinctions". (246 U. S. 482.)

But regardless of all else, it is difficult to understand how the Government can say, in the face of the *O'Keefe* case alone, as it does in a note on page 130, "we have been able to find no case in which th Commision or the Courts have held that Section 15 (13) authorizes or regulates allowances to an industrially owned or other common carrier."

D. Legislative History.

The point here to be noted is the Government's misapprehension of the affect of the exemption of lumber and the manufactured products thereof. It says that that shows an intention of Congress that the Commodities Clause should apply to transportation by all industrially owned railroads of the products of affiliated industrial corporations, except in the case of the lumber industry.

What it shows is that the Congress intended to permit railroads to engage in the lumber business, *i. e.* to transport their own lumber. We do not maintain that any railroad, industrially owned or not, may transport any other products which it has produced, owned, or in which it has the prohibited interest.

E. Construction by the Attorney General.

The idea here seems to be that whilst the Commodity Clause does not prohibit the industrial ownership of railroads, it does prohibit railroads so owned from transporting the products of the owning industry.

Since a majority of the traffic of industrial railroads as defined by the Interstate Commerce Commission is proprietary, it is difficult to see how the prohibition of such traffic could fail to destroy the relationship. Manifestly there would have been no point whatsoever in the various recommendations of the Attorneys General referred to if the Commodities Clause already prohibited transportation by a railroad of the products of an owning industry.

Conclusion.

It is respectfully submitted that the decree of the District Court should be affirmed.

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APPENDIX A.

Legislative History.

(a) The evils aimed at.

While the Hepburn Bill was under discussion Senator Elkins offered an amendment as follows (40 Cong. Record, 6455, May 7, 1906):

> "It shall be unlawful for any common carrier subject to the provisions of this act, unless authorized by its charter to do so, to engage, directly or indirectly, in the production, manufacture, buying, furnishing, or selling of coal or coke or any other commodity or commodities of commerce in competition with any shipper or producer on its line or lines: *Provided,* That nothing in this act shall be construed to prevent a carrier from mining coal exclusively for its own use."

This was the first concrete step in the adoption of the Commodities Clause.

Substantially the entire debate upon the Commodities Clause occurred in the Senate May 7, 8, 9 and 17, 1906, and the greater part of this debate related to parliamentary procedure. The senators, however, in the course of debate brought in review before the Senate the evils which semed to demand legislation and they made a record very definitely and specifically of what in their judgment should be done and what in their judgment should not be done.

Immediately after calling up the amendment above quoted, Senator Elkins said (40 Cong. Record, 6456, May 7):

> "Mr. President, I want to confine the railroads to the legitimate business for which they are incorporated—the transportation of freight and passengers—and to forbid them engaging in any other business, especially the business of mining, producing, and selling coal or any other commodity on their lines in competition with a shipper."

Again Senator Elkins said (40 Cong. Record, 6456, May 7):

> "Mr. President, I want to get this amendment in such shape that it will stop an evil or an abuse that obtains in West Virginia, Pennsylvania, and other coal-mining States. * * * I thought * * * it would be better to put into the statutes of the United States a positive prohibition that railroads should not engage in the mining and manufacture and production and selling of coal and coke, and that they should be confined to the legitimate business for which they were chartered, to-wit, the transportation of freight and passengers."

Senator Spooner said (40 Cong. Record, 6459, May 7):

> "Mr. President, the evil sought to be remedied by this amendment is one as to the existence of which there can be no question. I think it has relation principally to the mining of coal. Companies engaged in interstate transportation, even though engaged lawfully in the States in mining and producing coal, have been able to freeze out independent

operators. They have been able thereby to diminish the output of a necessary of life, and to put upon consumers throughout the country a price to suit their own will. That ought to be remedied."

Senator Elkins said (40 Cong. Record, 6496, May 8):

"Mr President, the purpose of introducing this amendment was to correct an abuse and evil growing up in the State of West Virginia and in other mining States, owing to the fact that railroads engage in competition with producers on their lines."

Senator Elkins said (40 Cong. Record 6498, May 8):

"What I am contending for in this amendment is that the independent operator, the individual mine owner, shall be protected in his business against the rapacity and injustice of railroads owning coal lands. No independent operator, no small mine owner, can afford to engage in competition with a railroad company that owns twenty or thirty or forty thousand acres of coal doing business in the same locality.
* * *

"I believe in confining strictly and positively railroads to doing two things—the transportation of freight and the transportation of passengers, and engaging in no other business of any kind whatsoever, directly or indirectly."

Senator Elkins also said (40 Cong. Record, 6499, May 8):

"Mr. President, I think it is plain, in the words of the substitute offered by the Senator from North Dakota, that if common carriers are engaged in mining and selling coal or coke or other commodities along their lines in competition with shippers, it

should be prohibited. That is a plain, simple proposition. It is an evil and an abuse, and if it is not checked it will enable the railroads of the country to absorb the mining business along their lines to any extent."

The consideration of the subject on May 9 was by the Senate in Committee of the Whole (40 Cong. Record, 6551).

Senator Culberson said (40 Cong. Record, 6562, May 9):

"Mr. President, the chief evil which we desire to eradicate in this matter is the ownership of coal mines by railroad companies engaged in interstate commerce. * * * The evil is the ownership and the production by the corporations themselves aside from their legitimate business of transportation."

Senator Carter said (40 Cong. Record, 6564, May 9):

"* * * The chief purpose of the amendment is to cure an evil which has become well known to the country at large—the control of coal by the railroads in the anthracite region of Pennsylvania. That is the main purpose of the amendment. Of course the evil extends to West Virginia and contiguous territory. But therein rests the point to which most of the discussion is directed, and that is the evil sought to be corrected. It will require the best thought of the Interstate Commerce Committee to apply a general law to that existing evil and at the same time avoid touching a vital point in the industrial life of the country in many other sections."

Senator Tillman said (40 Cong. Record, 6567, May 9):

"We all know there are grave abuses and outrageous conditions not only in West Virginia, but in Pennsylvania, in East Tennessee, in the Indian Territory, and I do not know where else. I will read, for the information of the Senate, what very few Senators have ever read since I introduced my report here, some observations I made on this very topic in the brief report which I presented.

'The necessity for granting, at some time, relief to producers and shippers in several important particulars not provided for in this bill may be wisely considered in connection with the pending discussion—'

"I am speaking of the rate making—

'There is no provision, except a most vague and indefinite one, for the anomalous and outrageous condition of affairs disclosed as existing in West Virginia. The letter of Governor Dawson of that State, published in the Congressional Record of February 8, and the memorial of the Red Rock Fuel Company, published in the Record of January 29th, taken together, disclose a situation that is almost beyond belief. The railroads have seized on the vast mineral wealth of the State in its extensive coal fields and have created a monopoly in that prime necessity of life, fuel.

'Landowners who wish to mine and ship their coal are denied access to market, while the roads themselves are engaged extensively in mining and shipping coal; and when private individuals or companies seek to develop their coal lands and send their product to market, the railroads deny or refuse to grant them the privilege of engaging in inter-

state commerce. In the case of the Red Rock Fuel Company physical connection was refused. They would not permit this coal-mining company to join its track with a switch to the track of the Baltimore and Ohio Railroad and thus obtain an outlet. In other cases mines have had to shut down because of the denial of cars by the railroads. The coal output, in effect, is controlled absolutely by the railroads in their own interest, and in the case of this particular State the infamy of the situation is aggravated by the fact, which is practically proven'—

"And has since been absolutely proven—

'that the three railroad systems entering West Virginia are controlled by an outside road, the Pennsylvania.

'There are many other instances in which the proof has been furnished of even more outrageous abuse of power than in the instance cited of the Red Rock Fuel Company case. Where connections between the mines of private companies were already in existence under arrangements made some years ago, the tracks have been torn up and virtual confiscation of the property is threatened. Vested with the rights of eminent domain to construct their lines and granted liberal franchises and charters, the railroads, designed to be public carriers for the benefit of the whole people, in the last few years have become rapidly transformed into the veriest band of robbers—highwaymen who do not thrust their pistols in the faces of their victims and demand money or their lives, but who levy tribute in freight rates which are as high as the traffic will bear, deny access to market, monopolize with brazen effront-

ery one of the prime necessaries of life—coal—and in every way show their absolute contempt for the people and the people's rights.

'The condition of affairs in West Virginia is even worse in Pennsylvania, and from every point of the country come reports that the railroads have practically already obtained control of almost all the coal lands, and where they have not bought the land itself they have obtained mineral leases and are rapidly carrying out the scheme of monopolizing the fuel supply of 85,000,000 people.' * * *"

Senator Bacon said (40 Cong. Record, 6568, May 9):

"The evil sought to be remedied, as I understand, is that the railroad companies own coal mines and monopolize the production and the carriage of this property."

Senator Tillman, on May 17, repeated much of what is quoted above (40 Cong. Record, 7011).

The case of *New York, N. H. & H. R. R. Co. v. Interstate Commerce Commission,* 200 U. S. 361, 50 L. ed. 515, had been decided by the Supreme Court of the United States on February 19, 1906. It appeared in that case that the Chesapeake and Ohio Railroad Company had sold large quantities of coal to be delivered at a certain place at a price less than the cost of purchase by that railroad company plus the regular published freight rate for transporting the coal from the point of purchase to the point of delivery. The Supreme Court had held this transportation unlawful. The case was referred to many times in the course of debate as illustrating the evils of a railroad company owning or being interested in the commodities which it trans-

ported. It was referred to by Senator Elkins (40 Cong. Record, 6498), by Senator Bacon (40 Cong. Record, 6499 and 6500), by Senator Foraker (40 Cong. Record, 6500), by Senator Lodge (40 Cong. Record, 6509), by Senator Culberson (40 Cong. Record, 6562), and by Senator Teller (40 Cong. Record, 6565, 6566).

From what is quoted above from the debates upon this subject it is very apparent that the primary evil which was engaging the attention of Congress was the practice which had grown up of railroads in Pennsylvania and West Virginia and other places, principally in the East, of acquiring coal mines and then transporting the coal on their own railroads resulting in great discrimination against independent producers of coal.

But while considering this evil the Senators were very much alive to the fact that there were other circumstances and conditions throughout the country which ought not to be disturbed but which might be disturbed unless the Commodities Clause as finally adopted was carefully and discriminatingly phrased.

(b) Ownership of railroads by industrial companies not to be disturbed.

Many of the Senators voiced the fear that by acting hastily they might adopt a law that would include more than it was wise to include.

Senator Tillman said (40 Cong. Record, 6460, May 7):

> "Mr. President, I think when Senators consider this question a little more they will find that there are other sides to it which will add to its perplexities. Granting that all of us are earnestly desirous of accomplishing the result of divorcing production

and transportation—and I have heard no objection to it, stated in a general way like that, from any source—the more you consider it the more troublesome it grows. At least that has been my experience, and I have been thinking a great deal about it; and I have had suggestions from various sources. I have asked half a dozen great lawyers to suggest amendments; each and every one of them differ; and as yet I have not been able to get any satisfactory solution so far as my own mind goes. * * *

"For instance, suppose we should limit the engaging in interstate commerce of a public carrier to the production by others, forbidding transport beyond the State line of any article which he himself was producing, what would become of that class of cases or those conditions in some region where the country is sparsely settled and where there is a great lumbering industry—that is, a great deal of lumber standing in trees? I have known half a dozen railroads in the South, in my own limited scope of view, that have been built entirely and solely for the purpose of hauling out the lumber from the swamps and backwoods to get it to market; and but for the fact that the lumbermen built their own road they absolutely would have had no market for their product

"Take coal. Go into West Virginia and you find in some of those coves and backwoods large and rich deposits of coal which will lie there—I will not pretend to guess how long, but fifty or a hundred years—undeveloped and unproductive, lacking in value to the present owners, if you say to a company, 'You shall not buy this coal and construct a road to market your coal and get it out so as to put it on the market.' So you will put a ban on those lands and they will lie there useless.

"I take West Virginia as an illustration, because I have had a great many communications from down there complaining about the discrimination and injustice of the Baltimore and Ohio and the Chesapeake and Ohio in their dealings with private operators. Lots of those people have been bottled up, but those little roads have been built primarily for the purpose of getting to the through roads or interstate-commerce roads. While they will transport small quantities of other products, they will build primarily and solely for the purpose of marketing the coal which they have bought, and without the coal there would have been no road, and without the road the coal is valueless. So if you say a man who undertakes to build his own road solely for the purpose of marketing his own coal shall not continue to run the railroad, you put up a barrier to his utilization of his own property.

"As I said, you cannot have any sweeping and general provision here without doing serious injury somewhere. * * * You see the perplexity and the difficulty of legislating along this line without seriously jeopardizing somebody's interests."

Senator Dick said (40 Cong. Record, 6496, May 8):

"Mr. President, the inquiry of the Senator from New Jersey (Mr. Dryden) is both pertinent and important. Either the time should be extended very considerably or this matter should be dealt with in an entirely separate bill. In the first place, we recall that some years ago the iron masters of Pittsburgh constructed a railroad, extending through a part of the State of Pennsylvania and a part of the State of Ohio, to reach the ports of Lake Erie for the purpose of carrying iron ore from the Lake

ports to Pittsburgh because of extortionate rates charged them by the railroads. If this amendment is adopted and that road is still in the possession of the men who constructed it, they must either go out of the business of manufacturing steel or the business of common carrier. * * *"

It will be particularly noted that the railroad referred to extending from Pittsburgh to Lake Erie is 160 miles in length and performs a general common carrier service. It is now known as the Bessemer and Lake Erie Railroad Company.

Senator Bacon said (40 Cong. Record, 6499, May 8):

"Mr. President, I am very much inclined to the opinion, as has been expressed by several Senators, that this is a matter we should not attempt to deal with in the pending bill. * * *

"That is an extremely difficult question, and it is one which not only will affect illegitimate enterprises, if I may so denominate them, but it is one which will affect legitimate enterprises, and therefore it should be regulated with great care, so as not in any manner to do unwonted injury to those legitimate enterprises.

"I will give an illustration. Of course, in these matters the fact that it will affect industries in our particular localities naturally occurs to Senators. The Senator from Pennsylvania instanced the case of the lumber trade in North Carolina, and that is true also in the State of Georgia. The southern half of the State of Georgia is a timber-produc-

ing section. Very many railroads have been built in that section for no purpose except to develop the timber industry. Men owning large tracts of timber land remote from railroads have built railroads into those tracts of land for the purpose of being able to market the timber. After they have built the railroads, while they are engaged primarily and principally in the transportation of timber which they themselves cut, they also take some business from the public in the way of the carrying of passengers and freight, and however minor it may be compared with the main business of carrying the timber, it constitutes them as common carriers."

Senator Dolliver said (40 Cong. Record, 6500, May 8):

"No more difficult railway pr[illegible]n exists than this connection of the carriers with the productive enterprises of the country. That relation is in all forms. Some railroads own coal mines and undertake to engage in the distribution of coal, and curiously enough, some coal mines own railroads, because it has become a favorite method in these days in organizing a coal corporation to anticipate in a way the probable attitutde of Congress, and the public dreads a mixture of the two functions. So it is not uncommon to find great coal corporations having as a part of their charter rights the right to build and operate railroads."

Senator Carter, before the Senate as a Committee of the Whole, said (40 Cong. Record, 6563 and 6564, May 9):

"We have one enterprise in the State of Montana in which there are today over 20,000 men engaged at good wages in the production of copper. It constitutes the great industrial enterprise of our State.

This copper is reduced twenty miles from the mines. The mines are chiefly in and about the city of Butte. The largest copper smelter in the world is located at Anaconda, some twenty odd miles distant. For many years the great mining companies undertook to have their ores transported from Butte to Anaconda through the agency of an independent railroad company. They found the rolling stock inadequate; the cars were not suited to the purpose; the service was fitful and uncertain, and rates were often prohibitive.

"In order that this work might proceed, the copper companies on their own account built a railroad from the copper mines to the copper smelter, a distance of 20 miles. In actual operation this intervening piece of track between the mine and the smelter is as essential to the operation of the general business as the tracks within the levels themselves, upon which run the small cars filled with ore.

"This railroad, running from Butte to Anaconda, was constructed principally to carry the copper ore from the mine to the smelter. Incidentally passengers are carried over it also. The Great Northern uses that track for twenty miles, because Anaconda is the terminal of the Great Northern passenger trains which reach there from St. Paul and Puget Sound. It is therefore partly engaged in interstate commerce. * * *

"Now, what would be the effect of the amendment of the Senator from West Virginia? This company would be compelled to dismember itself. The effect would be to disrupt and disorganize and devitalize the best and largest industry and enterprise in that State. The enterprise cannot be successfully conducted without the railroad, and the railroad cannot be operated successfully by an outside company."

Senator Clark said (40 Cong. Record, 6565, May 9):

"There is another feature of this question which I want to present to the Senate. All over that western part of this continent, as has been shown by the development of a half century, discoveries of great mines have been made and are still being made everywhere. In many instances mines are found containing base metals, lead and copper, at points many miles from any railroad. Persons who own those mines of base metals cannot work them unless they have railroad facilities. Butte was kept back for fifteen years for want of railroad facilities, and I know of a number of instances where mines have been discovered and developed and found to be big mines, but being owned by individuals or perhaps by a single company there was no railroad company that would undertake to build a line to them for the reason that it would be hazardous, as they might shut down the mines at any time. What was the result? The owners of the mines—the individuals or the company, as the case might be—have been obliged to build a branch road themselves to the nearest road, in order to secure access to the markets of the world for the products of their mines.

"There is an instance of this kind in southern Arizona, the Copper Queen Mining Company is owned by Phelps Dodge and Co., and they have a number of the greatest mines in that wonderful Territory. They were obliged for their own protection to build a road about 200 miles in length, and today it is in operation. When that road was con-

structed it became a common carrier, subject to the rules and regulations of the Interstate Commerce Commission. Now, what are you going to do under this amendment with such a proposition as that? I myself was obliged to build a road shorter than that —but 28 miles in length—before I could get the products of a copper mine to the market. When I completed that road, some fifteen years ago, it became an interstate-commerce road, because all the products went out and supplies came in through other States and Territories."

Senator Teller said (40 Cong. Record, 6565 and 6566, May 9):

"What I want to call the attention of the Senate to is simply that the complaint there was with reference to the transportation of coal. The Senator from West Virginia (Mr. Elkins) who has introduced this subject in making his complaint simply because of the unfair treatment of the coal miners and coal dealers of that State. The Senator from Montana who first spoke (Mr. Carter) has told us something of the difficulty in dealing with this question, and so has the Senator from Montana (Mr. Clark) who spoke last. With some knowledge of the conditions not only in Montana, but in Arizona, what both Senators have presented here satisfies me that there is danger of this legislation going very much beyond the point we ought to go. We are very liable to do more harm than good. If we would confine it entirely to the coal business for the time being, I think perhaps it would be better than to include all commodities and all kinds of service."

Senator Fulton said (40 Cong. Record, 6566 and 6567, May 9):

> "All over the West, as the Senator from Colorado (Mr. Teller) has said, there are little railroads which have been built to connect with coal mines and sawmills, that have been built simply to get the product from the mills and the mines. In such cases mining and milling are the principal enterprises. The railroading is merely incidental thereto, and yet those railroads connect with interstate lines, or with other railroads connecting with transcontinental or interstate lines. Hence these small roads doubtless would be held to be engaged in interstate commerce. It seems to me, Mr. President, that a distinction should be made and that proper exceptions should be provided in any legislation that shall be enacted on this subject in order to protect such enterprises. Just what those exceptions should be and just how they should be framed I am not prepared at this moment to say, and it does not seem to me that any other Senator is prepared to say."

We have now seen that during the debate there was brought to the attention of the Senate repeatedly and forcefully the fact that throughout the country there were many industrial companies which owned railroads. The opinion was expressed by many of the Senators that the ability of these industries to own railroads was very important to the prosperity of the country. These Senators were very urgent that nothing should be done while attempting to correct the evils relating to the coal business in the East which would injure the business in the West.

Now let us see what they did about it.

(c) The Senate made a very definite and specific record that it did not desire the Commodities Clause to apply where the shipper of a commodity also owned an interest in the railroad.

On May 9th, Senator McLaurin offered as a substitute for the draft previously under consideration, the following (40 Cong. Record, 6559):

> "From and after May 1, 1908, it shall be unlawful for any common carrier to transport from any State, Territory, or District of the United States to any other State, Territory, or District of the United States or to any foreign country any article or commodity manufactured, mined, or produced by it or under its authority, or which it may own in whole or in part, or in which it may have any interest, direct or indirect, except such articles or commodities as may be necessary or used in the conduct of its business as a common carrier."

This, it will be noted, is substantially the Commodities Clause as finally adopted. This draft was withdrawn a few moments later (40 Cong. Record, 6559). It was later offered by Senator Elkins the same day (40 Cong. Record, 6561) and again offered by Senator Elkins later in the day (40 Cong. Record, 6568).

It was agreed to as a substitute for the draft previously pending (40 Cong. Record, 6569, 6570). This action was taken by the Senate as a Committee of the Whole (Cong. Record, 6551).

On May 17, the clause in the form last quoted came up for consideration before the Senate (40 Cong. Record, 7011).

Senator Tillman said (40 Cong. Record, 7011):

> "I have here a communication from a gentleman engaged in coal production, and he points out that this amendment would not prevent the ownership of coal properties by the ownership of stock in coal companies; that it would not prevent the control of coal companies by officials of railway companies; *that it would not touch the ownership of railroads by coal companies or the common ownership of railroad companies and coal companies.*" (Italics ours.)

He then presented and introduced into the record a long letter making the points referred to.

Senator Tillman thereupon offered an amendment or substitute as follows (40 Cong. Record, 7012, May 17):

> "After May 1, 1908, it shall be unlawful for any common carrier to engage in the transportation of interstate commerce, if such common carrier shall at the time be interested, directly or indirectly, by stock ownership or otherwise, in the article or property which is the subject-matter of such commerce, or if it be interested at the time, directly or indirectly, by stock ownership or otherwise, in the mines or factories producing such commerce; or if at the time any officer, director, agent, or employee of such common carrier be interested, directly or indirectly, by stock ownership or otherwise, in the business of buying or selling such article or property which is the subject-matter of such commerce, or in the mines or factories producing the same; or if at the time stockholders owning more than 10 per cent of the capital stock of such common carrier be interested, directly or indirectly, in the business of buying or selling such article or property which is the subject-matter of such commerce, or in the mines or factories producing the same.

"This section shall not prevent a common carrier from mining coal or carrying articles or property for its own use or for the use of its officers, directors, agents, employees, or stockholders."

Here is the precise question we have been discussing. If this change had been made in the section under consideration the section would have provided that it would be unlawful for a common carrier to transport in interstate commerce any article or commodity if at the time stockholders owning more than ten per cent of the capital stock of such common carrier were interested in the business of buying or selling such articles or property which were the subject-matter of such commerce or in the mines or factories producing the same.

In view of the discussion which had taken place before the Senate, this proposed amendment put up to the Senate squarely the necessity of choosing whether the act should merely prohibit a railroad from transporting articles or commodities which the railroad company owned or had an interest in, etc., or whether it should also prohibit it from transporting commodities if the owner of the stock of the railroad was also interested in the commodities transported.

The Senate rejected the amendment (40 Cong. Record, 7012, 7014, May 17).

Shortly afterwards the following took place (40 Cong. Record, 7013):

"Mr. Elkins: Mr. President, the purpose of this amendment, which was adopted by such a large majority when the bill was under discussion in Committee of the Whole, is to make a start toward divorcing production and transportation. I think the

amendment is drawn as mildly as it can be and accomplish anything.

"The Senator from Washington (Mr. Piles) makes an appeal here that logging roads in his state shall be excepted, or that, on account of their being handicapped so much by this amendment, it should not go into the law. If I understand the Senator's position, and if these logging roads are owned by lumber companies and incidental to their business, the law would not apply to them; or, if I understand, if these are intrastate logging roads or private roads they do not come under the operation of the law, nor are they interstate carriers.

"Mr. Piles: Will the Senator pardon me for a moment?

"Mr. Elkins: Certainly.

"Mr. Piles: It is provided that this bill shall be applicable to carriers partly by rail and partly by water. I have endeavored to demonstrate that these logging roads are carrying partly by rail and partly by water, and it is not only interstate, but it is foreign commerce.

"Mr. Elkins: Which company owns—the steamship company, the lumber, or the railroad company?

"Mr. Piles: One company owns the logging road and the saw mill and the steam schooners.

"Mr. Elkins: Which owns?

"Mr. Piles: One company.

"Mr. Elkins: Which is the owning company?

"Mr. Piles: I do not recall. In some cases it may be the lumber company, and in others it may be the railway company.

"Mr. Elkins: That is the very thing which produces the confusion here. If the lumber company

owns this little line of railroad, 20 or 30 miles long, as an incident to its business, then this proposed law does not apply."

A few minutes later an amendment was adopted excepting "timber and the manufactured products thereof" (40 Cong. Record, 7015).

Other amendments were offered and rejected (40 Cong. Record, 7014, 7015 and 7016), and then the amendment in the form above quoted, with the exception of lumber, and the manufactured products thereof, was concurred in by the Senate (40 Cong. Record, 7017).

After substituting the words "railroad company" for the words "common carrier" the section became a part of the Hepburn Bill and was duly adopted and became the law.

We have urged that upon the face of the statute as it finally came from Congress it is very clear that Congress intended only to prohibit a railroad from transporting commodities when the railroad owned or had an interest in the commodities, etc., and that it clearly omitted to make it unlawful for a railroad to transport commodities when the owner of the commodities had an interest in the railroad.

The amendment of Senator Tillman quoted brought that specific proposition before the Senate and the Senate made a clear, unequivocal and absolute record of its purpose and intent when it voted down the amendment.

When a legislative body in the course of its discussion of a measure before it, votes down a proposition, by that act it makes very clear its intention that that proposition shall not be incorporated into and become a part of the law which it finally adopts.

APPENDIX B.

Construction Put Upon the Commodities Clause by the Department of Justice.

In connection with the point now under consideration, it is most interesting and instructive to notice that notwithstanding the Attorney General has been of the opinion that the law ought to prohibit the transportation by a railroad when the owners of the commodities transported also owned the railroad, yet he has been compelled to hold that the law as it now stands does not cover such cases.

Attorney General George W. Wickersham in his Report of Attorney General of December 10, 1910 after referring to the decision of the Supreme Court in the *Hudson* case (213 U. S. 366) said (7):

> "As I point out in my last annual report, if the prohibition of the statute can be successfully evaded by the simple device of transfer of ownership of the property to a corporation, all of whose stock shall be owned or controlled by the carrier, Congress should amend the statute so as to make it an effectual and not a mere illusory prohibition or else repeal it."

In an opinion dated November 29, 1912, to the Secretary of the Interior, Mr. George W. Wickersham, Attorney General, after discussing the *Hudson* case (213 U. S. 366) and the *Lehigh* case (220 U. S. 257) in the Supreme Court, said (Vol. 29, Opinions of Attorney General, p. 592):

> "In the case which you have under consideration the determination whether or not the commodities clause as construed by the Supreme Court in 220 U. S. would apply to the shipment of coal over the Atchison, Topeka and Santa Fe road by the proposed

assignee of a lease, being a corporation all of whose stock it owns, must depend upon whether or not the company uses the coal company merely as an artificial legal entity which it completely dominates and controls, operating the coal company as an integral part of its own business, the corporation being a mere artificial division of the work which is in effect carried on by the railroad company; or whether, although the owner of all of its stock, the coal company is operated separately and distinct from the railroad company and is not used by it merely as a part or department of its general business, and is not in effect a mere device to escape the prohibition of the statute."

Mr. T. W. Gregory, Attorney General, in his Report of Attorney General of December 7, 1914, after discussing the *Hudson* case (213 U. S. 366) and the *Lehigh* case (220 U. S. 257) said, (p. 6):

"It is also necessary, if transportation and production are to be completely divorced, that Congress prohibit any railroad owned or controlled by a producing or trading corporation, and not operated merely as a plant facility, from transporting in interstate commerce articles produced or owned by such corporation, and I recommend the appropriate legislation to that end."

Mr. T. W. Gregory, Attorney General, in his Report of Attorney General of December 16, 1915, repeated the above recommendation in substantially the same words and then stated that, (p. 8):

"A bill to carry out this recommendation was introduced in the last Congress by the chairman of the House Committee on Interstate Commerce (H. R. 20470)."

Apparently Congress disagreed with the recommendation because although a like bill was introduced in the Senate and referred to Committee, neither bill was ever heard of afterwards. (63rd Congress Third Session, Vol. 52, Pt. I, Pg. 838 and 963).

Mr. T. W. Gregory, Attorney General, repeated in his Report of Attorney General of December 4, 1916, and in his Report of Attorney General of December 4, 1917, the same recommendations which he had made in his reports of 1914 and 1915, and in substantially the same words.

Mr. W. J. Donovan, Assistant to the Attorney General, in his Report of Attorney General for 1927, after again expressing prejudice against ownership by industrial companies, said, (pp. 26, 27):

> "The statute does not forbid the ownership of the roads by corporations."

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1935.

No. 660.

UNITED STATES OF AMERICA, *Appellant*

v.

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY.

MOTION OF THE AMERICAN SHORT LINE RAILROAD ASSOCIATION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE AND BRIEF AMICUS CURIAE.

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INDEX.

	Page
Motion for Leave to File Brief	1
Preliminary Statement	3
Questions Presented	4
Summary of Argument	4
Argument	5
Point A—The Commodities Clause does not, in purpose or effect, prohibit, *ipso facto*, a railroad subsidiary of a holding company transporting in interstate commerce commodities manufactured, mined or produced by a producing subsidiary of that holding company	5
Point B—Congress has consistently declined to amend the Commodities Clause in such a way as to prohibit, *ipso facto*, a railroad subsidiary of a holding company from transporting commodities manufactured, mined or produced by a producing subsidiary of that holding company	11
Point C—The Commodities Clause was not intended to prohibit Industrial ownership of railroads	15
Conclusion	17
Appendix	18

CITATIONS.

Cases: Page

Bullen v. *Wisconsin*, 240 U. S. 625 9
New York, N. H. & H. R. Co. v. *Ches. & Ohio Ry. Co.*, 200 U. S. 361 ..... 9, 10
United States v. *Chicago N. S. & M. Ry. Co.*, 281 U. S. 1 17
United States v. *Delaware & Hudson Co.*, 213 U. S. 366 8
United States v. *Delaware, L. & W. R. Co.*, 238 U. S. 516 8
United States v. *Lehigh Valley R. Co.*, 220 U. S. 257. 8
United States v. *Reading Co.*, 253 U. S. 26 6

Interstate Commerce Commission Decisions:

Algers, Winslow & Western Ry. Co., 145 I. C. C. 123 16
Alton & Southern R. R., 149 I. C. C. 22..... 17
Bauxite and Northern Ry. Co., 121 I. C. C. 474.... 17
Big Creek & Telocaset R. Co., 138 I. C. C. 751..... 16
Delaware & Hudson Co., 158 I. C. C. 615 .....16, 17
Edgemoor & Manetta Ry. Co., 114 I. C. C. 294..... 17
Hobart Southern R. R. Co., 190 I. C. C. 667..... 16
Lake Decatur & E. R. R. Co., 175 I. C. C. 405..... 16
Pittsburgh, A. & McK. R. R. Co., 114 I. C. C. 533.... 17
Trans-Florida Central R. R. Co., 124 I. C. C. 366.... 16
Upper Merion & Plymouth R. R. Co., 166 I. C. C. 351 17

Statutes:

Anti-Trust Laws, 26 Stat. 209 7
Commodities Clause, 34 Stat. 584, 585 3
Hepburn Act, 34 Stat. 584 10
Transportation Act, 1920, 41 Stat. 456 12

Miscellaneous:

Attorney General, Annual Reports of

For Year
1914, p. 6 11
1915, p. 8 12

Page

1916, p. 8 11
1917, p. 8 12
1927, p. 27 14

Congressional Record, Vol. 40, pp. 6460-7016.....10, 12

Interstate Commerce Commission, Annual Reports of
1905, pp. 10-11 15
1910, p. 33 16

Hearings:

On H. R. 20470, 63d Cong. 3d Sess. 13, 14

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ELGIN, JOLIET AND EASTERN RAILWAY COMPANY.

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE.

May it Please the Court:

The undersigned, as counsel for The American Short Line Railroad Association, respectfully moves this Honorable Court for leave to file the accompanying brief in this case as *amicus curiae.*

Respectfully submitted,

CLARENCE A. MILLER, *Counsel for*
THE AMERICAN SHORT LINE RAILROAD ASSOCIATION
As Amicus Curiae.

IN THE

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UNITED STATES OF AMERICA, *Appellant*

v.

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY.

BRIEF OF THE AMERICAN SHORT LINE RAILROAD ASSOCIATION AS AMICUS CURIAE.

I.

PRELIMINARY STATEMENT.

The American Short Line Railroad Association is a voluntary non-profit Association of 322 short-line railroads operating 11370 miles of railroad in the United States. The members of this Association have a direct economic interest in the proper interpretation and application of the so-called "Commodities Clause" of the Interstate Commerce Act,[1] which is involved in this case, and it is with re-

[1] Sec. 1 (a) of the Interstate Commerce Act, approved June 29, 1906, c. 3591, 34 Stat. 584, 585, U. S. C., Tit. 49, Sec. 1 (8). The statute reads as follows: "From and after May first, nineteen hundred and eight, it shall be unlawful for any railroad company to transport from any State, Territory, or the District of Columbia, to any other State, Territory, or the District of Columbia, or to any foreign country, any article or commodity, other than timber and the manufactured products thereof, manufactured, mined, or produced by it, or under its authority, or which it may own in whole or in part, or in which it may have any interest, direct or indirect, except such articles or commodities as may be necessary and intended for its use in the conduct of its business as a common carrier."

spect to this interest that this brief is filed. It is confined to a presentation of the interests of those in whose behalf it is filed, and endeavors not to duplicate the arguments presented by the able counsel representing the parties to the case.

II.

THE QUESTIONS PRESENTED.

This case presents for determination the question whether a railroad subsidiary of a holding company may transport in interstate commerce commodities[2] manufactured, mined or produced by a producing subsidiary of the holding company without violating the Commodities Clause of the Interstate Commerce Act.

Stated in another way the issue may be said to be whether a railroad subsidiary of a holding company, as a matter of law, owns, or has a direct or indirect interest in commodities manufactured, mined or produced by a producing subsidiary of the holding company by reason of the fact that the holding company owns both the railroad and the producing company.[3]

III.

SUMMARY OF ARGUMENT.

A. The Commodities Clause does not, in purpose or effect, prohibit, *ipso facto,* a railroad subsidiary of a holding company transporting in interstate commerce commodities manufactured, mined or produced by a producing subsidiary of that holding company.

---

[2] Timber and timber products and commodities necessary and intended for use by the railroad are excluded from the prohibitions of the statute.

[3] The questions presented as viewed by appellant are stated on pages 2 and 3 of its brief. As viewed by the appellee they are stated on pages 5 and 6 of its brief.

The Court below (R. 497-498) found, *as a fact,* that there is no domination of the affairs of the railroad subsidiary by its parent holding company. That finding, being supported by the evidence, the question of domination will, therefore, not be discussed in this brief.

B. Congress has consistently declined to amend the Commodities Clause in such a way as to prohibit, *ipso facto*, a railroad subsidiary of a holding company from transporting commodities manufactured, mined or produced by a producing subsidiary of that holding company.

C. The Commodities Clause was not intended to prohibit the industrial ownership of railroads.

IV.

ARGUMENT.

Point A.

The Commodities Clause does not, in purpose or effect, prohibit, ipso facto, a railroad subsidiary of a holding company transporting in interstate commerce commodities manufactured, mined or produced by a producing subsidiary of that holding company.

The Commodities Clause makes it unlawful for a railroad company to transport, in interstate commerce, any article or commodity (with specified exceptions) (1) that is manufactured, mined or produced (a) by it (the railroad company) or (b) under its authority, or (2) which it may own in whole or in part, or (3) in which it may have an interest, either direct or indirect.

To sustain the proposition that a railroad subsidiary of a holding company violates this clause when it transports commodities produced by a producing subsidiary of that holding company, the Court must find and hold that the ownership by a holding company of a railroad subsidiary and a producing subsidiary, as a matter of law,—

1. Makes the railroad subsidiary the manufacturer, miner or producer of the commodities manufactured, mined or produced by the producing subsidiary; or

2. Makes the railroad subsidiary the owner, in whole or in part, of the commodities manufactured, mined or produced by the producing subsidiary; or

3. Gives the railroad subsidiary an interest, either direct or indirect, in the commodities manufactured, mined or produced by the producing subsidiary.

The Court below found, *as a fact,* that the railroad subsidiary had not transported in interstate commerce any article or commodity which actually, as a matter of fact, was manufactured, mined or produced by it, or in which it actually, as a matter of fact, had an interest direct or indirect, excepting articles or commodities necessary and intended for use in the conduct of its business as a common carrier (R. 497).

The Court below concluded, *as a matter of law,* that the mere ownership by a holding company of all the stock of both a railroad corporation and an industrial corporation is not a violation of the Commodities Clause even when such railroad corporation transports in interstate commerce commodities produced or owned by such industrial corporation (R. 499).

We believe the Court below was right in its finding of fact and conclusion of law.

The appellee is a common carrier by railroad, incorporated under the laws of Illinois and Indiana, and is engaged in interstate commerce, subject to the Interstate Commerce Act (R. 2, 15). It serves many industries not in any way connected with the parent holding company or that holding company's producing subsidiaries (R. 90). It serves competitors of the producing subsidiaries of its parent holding company (R. 91).

To support its position that a railroad subsidiary of a holding company has an interest, within the meaning of the Commodities Clause, in commodities owned by producing subsidiaries of that holding company, appellant relies primarily upon *United States* v. *Reading Co.,* 253 U. S. 26, 64 L. ed. 760, 40 Sup. Ct. Rep. 425 (1920).

The *Reading Case* does not sustain this position because:

1. That case was primarily a suit under the Anti-Trust Laws,[4] and it was only by virtue of such that there was any authority for the decree rendered.

2. The Commodities Clause was only incidentally involved in that case.

3. The issue there, so far as the Commodities Clause was concerned, was whether combining in a single corporation the ownership of all of the stock of a carrier and all of the stock of a *coal* company resulted, *in fact*, in the railroad company having such a community of interest in the product of the coal company as to be within the prohibitions of the Commodities Clause, when, *in fact*, the management and operation of the coal company and the holding company were by the same authority, the set-up being designed to accomplish things prohibited by the Commodities Clause.

In the instant case the Court below has found that the holding company has never taken any part in managing the operation of the railroad subsidiary, or exercised any control over the transportation conducted by it, or taken any part in the transactions between the railroad subsidiary and the shippers using it (R. 497). The facts in the instant case, therefore, readily distinguish it from the *Reading Case*. Additionally, the record is clear that the set-up in the case now before the Court was not in any wise designed to accomplish the prohibitions of the Commodities Clause.

The *Reading Case* did not holding that, *as a matter of law*, the ownership by a holding company of the stock of a railroad company and of the stock of a coal company *ipso facto* was a violation of the Commodities Clause.

On the contrary, this Court has held that in order that there be a violation of the Commodities Clause the railroad must have an interest, legal or equitable, in the commodity transported, and that the mere ownership of the stock of a

[4] Act of July 2, 1890, c. 647, 26 Stat. 209.

producing company does not give it such an interest. *United States* v. *Delaware & Hudson Co.*, 213 U. S. 366, 53 L. ed. 836, 29 Sup. Ct. Rep. 527 (1909).

This principle was approved in *United States* v. *Lehigh Valley R. Co.*, 220 U. S. 257, 55 L. ed. 458, 31 Sup. Ct. Rep. 387 (1911), and the rule established that where a railroad company owning the stock of a producing company so dominates the business of the producing company as to make the two practically undistinguishable there is a violation of the Commodities Clause where the railroad company transports the products of the producing company.

Again, in *United States* v. *Delaware, Lackawanna & Western R. Co.*, 238 U. S. 516, 59 L. ed. 1438, 35 Sup. Ct. Rep. 873 (1915), this Court held that the common ownership of stock of a railroad company and a producing company does not result in a violation of the Commodities Clause. In that case the railroad company was held to be violating the Commodities Clause only because, under a contract between it and the producing company, the two companies had, in fact, become inseparable. The situation in this case was held to be indistinguishable from that in the *Lehigh Case.*

Having considered the *Hudson, Lehigh* and *Lackawanna Cases,* this Court, in the *Reading Case,* at page 62 of its opinion, said that the law upon the subject now is—

> "* * * that while the ownership by a railroad company of shares of the capital stock of a mining company does not necessarily create an identity of corporate interest between the two such as to render it unlawful under the commodities clause for the railroad company to transport in interstate commerce the products of such mining company, yet where such ownership of stock is resorted to, not for the purpose of participating in the affairs of the corporation in which it is held in a manner normal and usual with stockholders, but for the purpose of making it a mere agent, or instrumentality or department of another company, the courts will look through the forms to the realities

> of the relation between the companies as if the corporate agency did not exist and will deal with them as the justice of the case may require."

Since, *as a matter of law*, the mere ownership by the holding company of the stock of the railroad company and the producing company does not, under the decisions above cited, result in a violation of the Commodities Clause where the railroad company transports the commodities of the producing company; and since, *as a matter of fact*, there is in the present case no domination of the affairs of the railroad company by the holding company, and the railroad company and producing company are separately and independently operated, the decree of the Court below should be affirmed. There has been no showing made by appellant which would bring this case, *ipso facto*, within the factual principles enounced.

Form alone cannot bring the case within the prohibitions of the statute when in fact it is not within its terms. Mr. Justice Holmes, speaking for the Court in *Bullen* v. *Wisconsin*, 240 U. S. 625, 630-631, 60 L. ed. 830, 36 Sup. Ct. Rep. 473 (1916), said:

> "When the law draws a line, a case is on one side of it or the other, and if on the safe side is none the worse legally that a party has availed himself to the full of what the law permits."

It is worthy of note that the *Hudson, Lehigh, Lackawanna, and Reading Cases* all involved the direct evil sought to be eliminated by the Commodities Clause, namely—the disassociation of the railroads from the ownership of *coal* transported by them.

The enactment of the Commodities Clause was the outgrowth of a number of investigations made by the Interstate Commerce Commission[5] of the transportation of *coal*

[5] Illustrative of this is the case of *New York, New Haven & Hartford R. Co.* v. *Chesapeake & Ohio Ry. Co.*, 200 U. S. 361, 50 L. ed. 515, Sup. Ct. Rep. (1906).

and *oil* owned, directly or indirectly, by the transporting carriers, which resulted in a conviction on the part of the Commission that the carrier's interest in the coal frequently created problems of unfair car distribution and discrimination in rates.

The Commodities Clause was enacted as a part of the Hepburn Act.[6] It was not in the bill as originally introduced, but had its inception in an amendment offered which provided only that no railway official or employee should be interested, directly or indirectly, in furnishing materials or supplies to a *mining* company.

On February 19, 1906, this Court handed down its opinion in *New York, New Haven & H. R. Co.* v. *United States*, 200 U. S. 361, 50 L. ed. 515; 26 Sup. Ct. Rep. 272 (1906), holding that there had been a departure from the filed tariffs so far as the transportation of certain coal owned by the Chesapeake & Ohio and sold to the New Haven was concerned. This case was frequently referred to in the debates in Congress as illustrating the evils of railroad-owned coal mines.[7]

These debates disclose that the primary evil aimed at by the Commodities Clause was the ownership of coal mines by railroads which transported the coal from these mines via their own roads with resulting discriminations against independently-owned mines.

During the course of the debates on the Hepburn Bill in the Senate many Senators urged the necessity of industries being able to own railroads.[8] That the Senate did not want the Commodities Clause applied where the shipper of a transported commodity also owned, or had an interest in, the railroad was made clear by the record.[9]

Congress clearly intended that the Commodities Clause

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[6] Act approved June 29, 1906, c. 3591, 34 Stat. 584.

[7] 40 Cong. Rec. 6498-6500, 6509, 6562, 6565-6566.

[8] 40 Cong. Rec. 6460, 6496, 6500, 6564-6567.

[9] Senator Tillman's amendment to accomplish this purpose was defeated. 40 Cong. Rec. 7012-7014.

be applied only where a railroad transports commodities which the railroad owns or in which it has an interest.

The record in the instant case is devoid of any facts showing the existence of any of the evils which the Commodities Clause was designed to eliminate.

Point B.

Congress has consistently declined to amend the Commodities Clause in such a way as to prohibit, ipso facto, a railroad subsidiary of a holding company from transporting commodities manufactured, mined or produced by a producing subsidiary of that holding company.

To give the Commodities Clause the interpretation and effect urged by the appellant would require the Court judicially to promulgate a rule of law which Congress has consistently declined to enact. It would seriously affect many so-called "Investment Trusts."

In his Annual Report to Congress, 1914, at page 6, the Attorney General of the United States said:

> "I recommend an amendment which will prohibit a railroad from transporting in interstate commerce articles which it manufactured or produced, or which were manufactured or produced by any corporation controlled by it or affiliated with it by having the same controlling stockholders, irrespective of whether such railroad or such controlled or affiliated corporation has an interest in the articles at the time of transportation. It is also necessary, if transportation and production are to be completely divorced, that Congress prohibit any railroad, owned or controlled by a producing or trading corporation, and not operated merely as a plant facility, from transporting in interstate commerce articles produced or owned by such corporation, and I recommend appropriate legislation to that end."

This recommendation was repeated in the Annual Reports of the Attorney General for 1915 (p. 8), 1916 (p. 8)

and 1917 (p. 8). In 1920 there was an extensive revision of the Interstate Commerce Act.[9] No member of Congress at that time proposed a revision of the law along the lines recommended by the Attorney General.

At the time the Commodities Clause was being considered by the Congress, Senator Tillman, of South Carolina, offered an amendment which would have prohibited what is here complained of. That proposed amendment read as follows:

> "After May 1, 1908, it shall be unlawful for any common carrier to engage in the transportation of interstate commerce, if such common carrier shall at the time be interested, directly or indirectly, by stock ownership or otherwise, in the article or property which is the subject-matter of such commerce, or if it be interested in the time, directly or indirectly, by stock ownership or otherwise, in the mines or factories producing such commerce; or if at the time any officer, director, agent, or employee of such common carrier be interested, directly or indirectly, by stock ownership or otherwise, in the business of buying or selling such article or property which is the subject-matter of such commerce, or in the mines or factories producing the same; or if at the time stockholders owning more than 10 per cent of the capital stock of such common carrier be interested, directly or indirectly, in the business of buying or selling such article or property which is the subject-matter of such commerce, or in the mines or factories producing the same.
>
> "This section shall not prevent a common carrier from mining coal or carrying articles or property for its own use or for the use of its officers, directors, agents, employees, or stockholders." (40 Cong. Rec., pt. 7, p. 7012, May 17, 1906.)

This amendment was rejected (40 Cong. Rec., pt. 7, p. 7014, May 17, 1906). Following this rejection the provision as it now exists was adopted (40 Cong. Rec., pt. 7, p. 7016, May 17, 1906).

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[9] Act of February 28, 1920, c. 91, 41 stat. 456.

This action clearly evidences the intent of the Congress not to prohibit the common ownership of a railroad company and a producing company, and, further, not to prohibit a railroad subsidiary of a holding company from transporting the products of a producing subsidiary.

That the Congress did not desire a change in the law to effectuate what is here being sought is evidenced by the fact that no attention was paid to the recommendations of the Attorney General as above noted, except the introduction of bills which were never acted upon.[10]

Appearing before the Committee on Interstate and Foreign Commerce of the House of Representatives, on January 15, 1915, in connection with H. R. 20470, introduced to carry out the recommendations of the Attorney General, the Assistant Attorney General, Mr. Todd and Representative Sims, the Chairman of the Committee, engaged in the following colloquy:

> "Mr. Sims. Has any case arisen where the coal company owned the railroad and shipped its product over its own railroad and in that way evaded the effect of the law?
>
> "Mr. Todd. That is my third point. I have stated two reasons why the present law fails to accomplish the object which apparently it is conceded Congress had in mind. The third reason is that the law itself, apparently, does not prohibit such a case as Mr. Sims stated, where the producing company owns and operates a railroad—at least it does not do so in terms. In the bill which the chairman has introduced that case is met.
>
> "Perhaps I had better now summarize the three reasons why the present law does not accomplish a separation of transportation from production. The first reason is that under the decisions of the courts the act speaks as of the time of transportation, as it were, and does not prohibit a railroad company engaged in interstate commerce from transporting in interstate com-

[10] H. R. 20470, 63d Cong., 3d Sess., was the only one which was considered to the extent of holding hearings on it. It received no further attention.

merce articles which it produced, provided it parts with title before the transportation. The second reason is that it has been held that a railroad company has not interest, direct or indirect, in an article owned by a coal company whose stock in turn is owned by the railroad company, unless the railroad company has in the particular case so exerted its stock control over the coal company, so commingled with the affairs of the two as to make the coal company a mere department of the railroad company. The third deficiency is that under the existing law, by its terms at least, a producing or manufacturing company is not prohibited from owning and operating a railroad company. Of course, I take it that no one desires to prohibit a manufacturing company from owning a railroad company as a mere plant facility. What I mean is that under the existing law there is nothing to prevent a manufacturing company from owning what is virtually a trunk-line railroad company."—*Hearings on H. R. 20470, Before Committee on Interstate and Foreign Commerce, House of Representatives, January 15, 1915. U. S. Senate Library, Hearings, Vol. 96, No. 5, pp. 9-10.*

In his Annual Report for 1927, at page 27, the Attorney General again called the matter to the attention of Congress, in the following language—

"In recent years industrial and manufacturing corporations have acquired ownership or control of numerous railroads, comparatively small in size, but important, nevertheless, because of their strategic locations and the large volume of interstate traffic hauled by them. While operating as and enjoying all the privileges and powers of common carriers, generally speaking, these roads are but mere departments of the industrial corporations which own or control them and whose traffic is transported by them. The statute does not forbid the ownership of the road by corporations, yet the evils of discrimination and preference resulting from such ownership are equally detrimental as when the carrier owns the manufacturing or producing company."

Thus it will be seen that the Congress has consistently declined to amend the law so as to read as this Court is asked to interpret and apply it. It would be unfortunate, indeed, if this Court should render a decision which would have the effect of prohibiting the industrial ownership of railroads.

Point C.

The Commodities Clause was not intended to prohibit Industrial ownership of railroads.

When Congress enacted the Commodities Clause, in 1906, it had before it the recommendations of the Interstate Commerce Commission.

Prior to 1905 the Commission had made no recommendations for legislation. In its Annual Report for 1905, at pages 10-11, it said:

> "It has been suggested that the Congress should prohibit railways from employing any agency or using any facility in the transportation of property which is furnished by the owner of the property. We should hesitate to recommend at this time so drastic a measure as that. Assuming that such a law would be a constitutional exercise of authority, it would seriously interfere with property rights which have grown up under the present system. Moreover, there are many instances in which the service can be rendered or the facility furnished more advantageously both to shipper and railway and without injury to the public if provided by the shipper himself."

Congress, therefore, limited its legislative efforts to disassociating the carriers from the mining and shipping of coal and their primary function of furnishing transportation service, and to giving the Interstate Commerce Commission adequate power to curb any abuses that might arise, by authorizing it, in Section 15 (13) of the Interstate Commerce Act, to determine the reasonableness of allowances made by the railroads to shippers.

Only once since the enactment of the Commodities Clause has the Interstate Commerce Commission decried alleged discrimination by reason of the community of interest between carriers and industrial corporations. (Annual Report, 1910, p. 33.)

Since that time the Commission has, in numerous cases, approved the construction of railroads by industries furnishing even a major portion of the traffic to be hauled by the carrier.[11]

As late as 1930 the Commission authorized the acquisition by the Delaware & Hudson Railroad Corporation of the lines of railroad operated by the Delaware & Hudson Company. The Delaware & Hudson Company is a holding company owning the stock of the Delaware & Hudson Railroad Corporation, on the one hand, and the stock of the Hudson Coal Company and other industrial companies on the other hand. The acquisition by the Delaware & Hudson Company of control of the Delaware & Hudson Railroad Corporation by purchase of stock was also authorized and approved. The Commission, therefore, approved a corporate set-up analogous to the one which the Government here contends results in a violation of the Commodities Clause, and one involving *coal*—the primary evil sought to be corrected by the Commodities Clause. (*Delaware and Hudson Company,* 158 I. C. C. 615 (1930))

In *Upper Marion & Plymouth R.R. Co. Acquisition,* 166 I. C. C. 351, also decided in 1930, the Commission approved the acquisition of the railroad by the Alan Wood Steel Company, where the industry owned the stock of a coke company and the railroad company, all being controlled by common interests, with common officers and directors. The Commission authorized the issue of its stock by the rail-

[11] Construction of Line by R. C., M. & N. Ry., 117 I. C. C. 19; Construction by Algers, Winslow & Western Ry., 145 I. C. C. 123; Acquisition by Trans-Florida Central R. R., 124 I. C. C. 366; Operation by Big Creek & Talocasst R. R., 138 I. C. C. 751; Hobart Southern R. R. Co. Acquisition, 190 I. C. C. 667; Lake Decatur & E. R. R. Co. Proposed Acquisition, 175 I. C. C. 405:

road company to be sold at par to the steel company, holding it was for a lawful object and compatible with the public interest.

There are many railroads having substantially the same corporate relation to their controlling industries as is involved in the case at bar.[12] The Interstate Commerce Commission has for years been acquainted with this situation. Both the Commission and the Attorneys General have recognized that such an interest is not prohibited by the Commodities Clause, and that the carrier may transport the products of the controlling industry. These roads, as well as the carrier involved in the case at bar, have for many years acted in accordance with the administrative and law-enforcing tribunals' construction of the statute. At this late date this settled administrative construction should not be interfered with. (*United States* v. *Chicago North Shore & Milwaukee Ry. Co.*, 281 U. S. 1, 77 L. ed. 583, 53 Sup. Ct. Rep. 245 (1933), and cases therein cited and followed.)

V.

CONCLUSION.

It is respectfully submitted that the decree of the lower Court should be affirmed.

Respectfully submitted,

CLARENCE A. MILLER, *Counsel for*
THE AMERICAN SHORT LINE RAILROAD ASSOCIATION
As Amicus Curiae.

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[12] Alton & Southern R. R., 149 I. C. C. 22, 37, 41; Bauxite and Northern Ry. Co., 121 I. C. C. 474, 496; Edgemoor & Manetta Ry., 114 I. C. C. 294, 295; Pittsburgh, A. & McK. R. R. R. Co., 114 I. C. C. 533, 534; Upper Marion & Plymouth R. R. Co., 166 I. C. C. 351; and Delaware & Hudson Co., 158 I. C. C. 615, 637, 641, are among them. A more extended list is attached as Exhibit. "A."

APPENDIX.

PARTIAL LIST OF INDUSTRIAL RAILROADS WHICH HAVE SUBSTANTIALLY THE SAME CORPORATE RELATION TO THEIR CONTROLLING INDUSTRIES AS THE DEFENDANT.

RAILROAD	I. C. C. REFERENCE	QUOTATION FROM REPORT
Alton and Southern R. R.	149 I. C. C. 22, 37, 41	It is controlled by the Aluminum Company of America, whose plant at East St. Louis, Ill., is apparently the principal industry served. The principal industries are the Aluminum Cooking Utensil Company, Excelsior Tool and Machinery Works, and the Lubrite Refining Company.
Bauxite and Northern Ry. Co.	121 I. C. C. 474, 486	It reports that during the year 1918 it handled 550,817 tons of freight of which 542,861 tons represented products of mines, most of which was received from the American Bauxite Company, a subsidiary of the Aluminum Company of America, which latter controls the railroad.
Dent's Run R. R. Co.	110 I. C. C. 239, 245	It is controlled by certain stockholders of the Bennets Branch Coal Company through ownership of a majority of its capital stock.
Dexter & Northern R. R. Co.	121 I. C. C. 675, 681	It is controlled by individuals connected with the Dexter Sulphite Pulp and Paper Company through ownership of its entire outstanding capital stock.
Edgmoor & Manetta Ry.	114 I. C. C. 294, 295	The principal industry served is the Manetta Cotton Mill at Lando, which furnishes most of the traffic. The railway and the cotton mill are controlled by the same interests.

Railroad	I. C. C. Reference	Quotation from Report
Garden City Western Ry. Co.	103 I. C. C. 601, 603	It is controlled by individuals who control the Garden City Sugar and Land Company.
Lithonia & Arabia Mountain Ry. Co.	106 I. C. C. 141, 143	The carrier is controlled by Louis Drach, principal owner of the Arabia Granite Company.
Lorain & Southern R. R. Co.	125 I. C. C. 234, 242	It is controlled by the owners of The Ohio Quarries Company through ownership of its entire outstanding capital stock.
Muncie & Western R. R. Co.	106 I. C. C. 318, 322, 323	On date of valuation the carrier was controlled by five individuals by the name of Ball, who were also the principal stockholders of the Ball Brothers Glass Manufacturing Company, a company closely affiliated with the carrier through ownership of all but one share of the outstanding stock of the carrier.
Pittsburgh Allegheny & McKees Rocks R. R. Co.	114 I. C. C. 533, 534	The business of The Pressed Steel Car Company is the principal industry served and is controlled by the same interests as the railroad.
River Terminal Ry. Co.	119 I. C. C. 12, 13	The carrier is an industrial railroad, most of its revenue being derived from switching cars between the plants of the River Furnace Company, an affiliated company, and connecting railroads. It is controlled by The St. Paul Iron Mining Company through ownership of a majority of the outstanding capital stock.

Railroad	I. C. C. Reference	Quotation from Report
St. Paul Bridge & Terminal Ry. Co.	143 I. C. C. 375, 389	It is controlled by Louis F. Swift through ownership of a majority of the outstanding capital stock.
Toledo, Angola & Western Ry. Co.	114 I. C. C. 646, 652	It is controlled by W. F. Robison through ownership of a majority of its capital stock. All recorded transactions pertaining to the carrier prior to October, 1908, were found in the books of the Toledo Stone & Glass Sand Company, which company was also controlled by W. F. Robison.
Verde Tunnel & Smelter R. R. Co.	108 I. C. C. 712, 714	Control of the carrier, on date of valuation, was vested in W. A. Clark, President of The United Verde Copper Company, through ownership of a majority of the outstanding capital stock.
Washington Run R. R. Co.	125 I. C. C. 171, 174	The railroad is controlled by the same interests that control the Manor Coal Company.
Minarets & W. Ry. Co.	43 Val. 442, 447	It is controlled by the same interests that control the Sugar Pine Lumber Company.
Peoria H. C. & W. Ry. Co.	44 Val. 871, 880	The carrier is controlled by the same interests that control the Crescent Coal Company, of Peoria, Ill.
Upper Merion & Plymouth R. R. Co.	166 I. C. C. 351	The Steel Company owns the stock of the Coke Company and of the applicant. The applicant serves the Steel Company, the Coke Company, and other non-allied industries on its line.

SUPREME COURT OF THE UNITED STATES.

No. 660.—October Term, 1935.

The United States of America, Appellant, *vs.* Elgin, Joliet and Eastern Railway Company.	Appeal from the District Court of the United States for the Northern District of Illinois.

[May 25, 1936.]

Mr. Justice McReynolds delivered the opinion of the Court.

Appellee, incorporated under the laws of Illinois and Indiana, has been an interstate common carrier by railroad since 1884. It operates the "Chicago Outer Belt Line," 195 miles long, which runs from a point on Lake Michigan, north of Chicago, around that city to South Chicago, Gary and Porter, south and east. This line connects and interchanges freight with every railroad entering Chicago and serves many industrial plants. Among them are certain large producers of steel and steel products, operated by corporations, sometimes called "Subsidiaries," all of whose shares belong to the United States Steel Corporation: Illinois Steel Company, American Bridge Company, American Sheet and Tin Plate Company, National Tube Company, American Steel and Wire Company, and Cyclone Fence Company. Transportation of products—raw, semi-finished and finished—to and from and amongst the plants of the six constitutes 60% of appellee's business. It files tariffs and complies generally with the Interstate Commerce Act and Commission regulations. During the years 1926-1930, its annual operating revenue exceeded $20,000,000.

The United States Steel Corporation, a holding—non-operating—corporation organized in 1901, then acquired and has ever since held, all shares of appellee, also all those of the producing companies.

By an Original Bill filed 1930 (amended 1932), the United States instituted this proceeding against appellee, sole defendant, in the District Court, Northern District of Illinois. They alleged that by

transporting articles manufactured, mined, produced, or owned by subsidiaries of the United States Steel Corporation, appellee violated the Commodities Clause of the Interstate Commerce Act (Act June 29, 1906, c. 3591, 34 Stat. 584, 585; U. S. C. A., Title 49, § 1 (8)), copied in the margin,[1] and asked for an injunction prohibiting such action.

After answer, voluminous evidence and trial, the court below made findings of fact and announced an opinion. It concluded—

Mere ownership by the United States Steel Corporation of all shares of both appellee and a producing subsidiary was not enough to show that products made or owned by the latter were articles or commodities produced by the former, or under its authority, or which it owned in whole or in part, or in which it had an interest, direct or indirect, and was forbidden to transport by the Commodities Clause.

Also, "no single piece of evidence taken alone, nor all taken together and considered as a whole warrant the inference that the defendant and the producing and manufacturing subsidiaries are under the domination, control, direction, and management of the Steel Corporation, in the sense that the defendant and the other subsidiaries are mere departments, branches, adjuncts, and instrumentalities of the Steel Corporation. The evidence fails to show that the defendant has any interest, direct or indirect, legal or equitable, in the articles or commodities which it transports for the subsidiaries of the Steel Corporation."

A final decree dismissed the Bill for want of equity and the cause is here by direct appeal (U. S. C. A., Title 49, § 45). Both conclusions are challenged and we are asked to reverse the decree and grant relief as originally prayed.

The Commodities Clause became part of the Interstate Commerce Act in 1906 (U. S. C. A., Title 49, § 1 (8)), and has re-

[1] From and after May first, nineteen hundred and eight, it shall be unlawful for any railroad company to transport from any State, Territory, or the District of Columbia, to any other State, Territory, or the District of Columbia, or to any foreign country, any article or commodity, other than timber and the manufactured products thereof, manufactured, mined, or produced by it, or under its authority, or which it may own in whole, or in part, or in which it may have any interest, direct or indirect, except such articles or commodities as may be necessary and intended for its use in the conduct of its business as a common carrier.

mained without material change. It was first interpreted here in *United States* v. *Delaware & Hudson Company*, (1909) 213 U. S. 366, 415, where, by Mr. Justice White, the Court said:

> "We then construe the statute as prohibiting a railroad company engaged in interstate commerce from transporting in such commerce articles or commodities under the following circumstances and conditions: (a) When the article or commodity has been manufactured, mined, or produced by a carrier or under its authority, and, at the time of transportation, the carrier has not, in good faith, before the act of transportation, dissociated itself from such article or commodity; (b) When the carrier owns the article or commodity to be transported, in whole or in part; (c) When the carrier, at the time of transportation, has an interest, direct or indirect, in a legal or equitable sense, in the article or commodity, not including, therefore, articles or commodities manufactured, mined, produced or owned, etc., by a bona fide corporation in which the railroad company is a stockholder."

This construction has been accepted and followed in the later cases. *United States* v. *Lehigh Valley R. Co.*, 220 U. S. 257, 266; *United States* v. *Delaware, L. & W. R. Co.*, 238 U. S. 516, 526; *United States* v. *Reading Co.*, 253 U. S. 26, 62; *United States* v. *Lehigh Valley R. Co.*, 254 U. S. 255, 266.

Through Mr. Justice Lamar, the court said, in *United States* v. *Delaware, L. & W. R. Co.*—

> "But mere stock ownership by a railroad, or by its stockholders, in a producing company, cannot be used as a test by which to determine the legality of the transportation of such company's coal by the interstate carrier. For, when the commodity clause was under discussion, attention was called to the fact that there were a number of the anthracite roads which at that time owned stock in coal companies. An amendment was then offered which, if adopted, would have made it unlawful for any such road to transport coal belonging to such company. The amendment, however, was voted down; and, in the light of that indication of congressional intent, the commodity clause was construed to mean that it was not necessarily unlawful for a railroad company to transport coal belonging to a corporation in which the road held stock. United States ex rel. Atty. Gen. v. Delaware & H. Co., 213 U. S. 414, 53 L. ed. 851, 29 Sup. Ct. Rep. 527. For a stronger reason, it would not necessarily be illegal for the road to transport coal belonging to a

> corporation whose stock was held by those who owned the stock of the railroad company."

Notwithstanding the intent imputed to Congress by this opinion, announced in 1915, no amendment has been made to the Commodities Clause. We must, therefore, conclude that the interpretation of the Act then accepted has legislative approval.

It is now insisted that, although a railroad company may own the shares of a producing company and yet transport the latter's products without violating the Commodities Clause, if a holding company acquires the shares of both carrier and producer, then such transportation becomes illegal. The theory is that the subsidiaries of holding companies are necessarily no more than parts of it. Evidently, this is entirely out of harmony with the reasoning advanced to support the construction of the Act adopted in *United States* v. *Delaware & H. Co., supra;* also in direct conflict with the above quoted language from *United States* v. *Delaware, L. & W. R. Co.*

Considering former rulings, it is impossible for us now to declare as matter of law that every company all of whose shares are owned by a holding company necessarily becomes an agent, instrumentality, or department of the latter. Whether such intimate relation exists is a question of fact to be determined upon evidence.

Counsel for appellants submit that the record compels the inference of fact that appellee and the subsidiary producing companies are but departments of the United States Steel Corporation; and that, as in *United States* v. *Reading Co., supra,* we should find the carrier is violating the Commodities Clause. It is not claimed that this inference derives from any single fact, but out of the mass. The following portion of the opinion in *United States* v. *Reading Company* is heavily relied upon—

> "But the question which we have presented by this branch of the case [alleged violation of the Commodities Clause] is not the technical one of whether ownership by a railroad company of stock in a coal company renders it unlawful for the former to carry the product of the latter, for here the railroad company did not own any of the stock of the coal company. The real question is whether combining in a single corporation the ownership of all of the stock of a carrier and of all

> of the stock of a coal company results in such community of interest or title in the product of the latter as to bring the case within the scope of the provisions of the act."

And, having regard to this, they say—"The affirmative answer given in the *Reading* case is controlling here."

Obviously, what was there stated cannot be taken as declaration of an abstract principle; it had application to the relevant circumstances. Later (pp. 61-62) in the same opinion the essential ones are revealed—

> "All three of the Reading companies had the same officers and directors, and it was under their authority that the mines were worked and the railroad operated, and they exercised that authority in the one case in precisely the same character as in the other—as officials of the Holding Company. The manner in which the stock of the three was held resulted, and was intended to result, in the abdication of all independent corporate action by both the Railway Company and the Coal Company, involving, as it did, the surrender to the Holding Company of the entire conduct of their affairs. It would be to subordinate reality to legal form to hold that the coal mined by the Coal Company, under direction of the Holding Company's officials, was not produced by the same 'authority' that operated the Reading Railway lines."

If the evidence here showed the relationship between the holding company, the carrier, and the producing companies to be substantially as in the *Reading* case, that opinion well might be regarded as controlling. But there is material difference and we must look elsewhere for guidance.

Properly to appraise the situation now presented particular attention must be given to the following facts. All shares of appellee and the subsidiary producing companies have been owned by the United States Steel Corporation since 1901. The railroad has been under constant supervision by the Interstate Commerce Commission. "In The Matter of Alleged Rebates to the United States Steel Corporation", 36 I. C. C. 557, (1915). It functions as a separate corporate carrier under immediate control of its own directors, no one of whom is on the board of the holding company; it owns all necessary equipment, makes its own contracts, manages its own finances, serves its patrons without discrimination and apparently to their satisfaction. The lawfulness of the relationship between the holding company and subsidiaries was challenged in *United*

States v. *United States Steel Corporation*, decided here in 1920, 251 U. S. 417. After long and thorough investigation and consideration, this court held the Anti-trust Act was not being violated. The present proceeding is one to prevent probable future unlawful conduct and not to punish acts long since completed, however reprehensible. "Our consideration should be of not what the Corporation had power to do or did, but what it has now power to do and is doing." *United States* v. *United States Steel Corporation*, *supra*, p. 444.

The court below made definite findings of fact and upon them reached the conclusions stated above. Although criticized, and notwithstanding certain isolated acts may indicate undue control over the carrier at their dates, we think that the findings are essentially correct and support the decree. Instances of participation in the affairs of the appellee by the officers of the United States Steel Corporation, stressed by counsel, are relatively few; a material part of them occurred years ago—some of the more important in 1909. They are not adequate to support the claim that appellee must be regarded as the *alter ego* of its sole stockholder. The mere power to control, the possibility of initiating unlawful conditions is not enough as clearly pointed out in *United States* v. *Delaware & H. Co.*, *supra*. That a stockholder should show concern about the company's affairs, ask for reports, sometimes consult with its officers, give advice and even object to proposed action is but the natural outcome of a relationship not inhibited by the Commodities Clause.

We find no adequate reason for disapproving the challenged decree and it must be

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

SUPREME COURT OF THE UNITED STATES.

No. 660.—October Term, 1935.

The United States of America, Appellant, *vs.* Elgin, Joliet and Eastern Railway Company.	Appeal from the District Court of the United States for the Northern District of Illinois.

[May 25, 1936.]

Mr. Justice Stone.

I think the judgment should be reversed.

The language of the commodities clause, read in the light of its legislative history, can leave no doubt that its purpose was to withhold from every interstate rail carrier the inducement and facility for favoritism and abuse of its powers as a common carrier, which experience had shown are likely to occur when a single business interest occupies the inconsistent position of carrier and shipper. See *United States* v. *Reading Co.*, 253 U. S. 26, 60, 61. Before the enactment of the commodities clause, Congress, by sweeping prohibitions, had made unlawful every form of rebate to shippers and every form of discrimination in carrier rates, service and facilities, injurious to shippers or the public. By the Sherman Act it had forbidden combinations in restraint of interstate commerce. But it did not stop there. The commodities clause was aimed, not at the practices of railroads already penalized, but at the suppression of the power and the favorable opportunity, inseparable from actual control of both shipper and carrier by the same interest, to engage in practices already forbidden and others inimical to the performance of carrier duties to the public. See *Delaware, L. & W. R. Co.* v. *United States*, 231 U. S. 363, 370; *United States* v. *Reading Co.*, *supra*.

It is not denied that the "indirect" interest of the carrier in the commodity transported, at which the statute strikes, may be effected through the instrumentality of a holding company which owns the stock both of the carrier and the company which manufactures and ships the commodity. This was definitely established by

the decision in *United States* v. *Reading Co., supra;* where it was held that the power of control through holding company ownership of all the capital stock both of an interstate rail carrier and a shipper producing the commodity carried, plus an active exercise of that control, are enough to make the transportation unlawful.

While it was recognized, as had been held in *United States* v. *Delaware & Hudson Co.*, 213 U. S. 366, that mere ownership, by a carrier or a shipper, of the stock of the other, does not call the statute into operation, the Court was careful to point out, pp. 62, 63, that "where such ownership of stock is resorted to, not for the purpose of participating in the affairs of the corporation in which it is held in a manner normal and usual with stockholders, but for the purpose of making it a mere agent or instrumentality or department of another company, the courts will look through the forms to the reality of the relation between the companies as if the corporate agency did not exist and will deal with them as the justice of the case may require." Domination in fact by a holding company both of the rail carrier and the producing shipper of commodities, in addition to its legal power to dominate them, is enough to bring the carrier within the prohibition of the commodities clause.

The only question for our decision is whether the complete power of the United States Steel Corporation, through stock ownership, to dominate both appellee and certain shippers over its lines, has been exercised sufficiently to exemplify the evil which the commodities clause was intended to prevent, and so to bring appellee within its condemnation. It is of no consequence that complaints of rebates by appellee to United States Steel Corporation subsidiaries have not been sustained, 36 I. C. C. 557, or that the Steel Corporation and its subsidiaries have been held not to infringe the Sherman Anti-Trust Act. *United States* v. *United States Steel Corp.*, 251 U. S. 417. The commodities clause does not forbid rebating or attempts to monopolize interstate commerce, which are dealt with by other statutes. It is concerned with transportation of commodities by a rail carrier where the carrier and the producer and shipper are so dominated by the same interest, through the exercise of power secured by stock ownership, as to make rebates, discriminations, attempts to monopolize and other abuses of carrier power, easy, and their detection and punishment difficult.

It is not important as the court below thought, that in the relations between the Steel Corporation and its subsidiaries "there was a scrupulous recognition of the separate entities," or that all transactions between them were "in the form of transactions and communications between two separate and distinct corporations," or that the business and accounts of each subsidiary "were kept separate and distinct" from those of others. Nor is it of any moment, as this Court seems to imply, that the affiliates do not have the same officers and directors, and that some years ago they abandoned the practice of maintaining interlocking directorates.

Those familiar with present day methods of corporate control will not be so naive as to suppose that the complete domination in fact of its subsidiaries by a holding company owning all their stock is in any way inconsistent with scrupulous recognition of their separate corporate entities, or with the maintenance of separate accounts and distinct personnels of officers and directors. Every holding company presupposes a relationship between it and a distinct corporate entity and its power to control the latter. Where the issue is whether that power has been exercised, "courts will look through the forms to the realities of the relation between the companies as if the corporate agencies did not exist." Hence we are presently concerned with what is in fact done in the Steel Corporation's exercise of its power to control, not with the particular legal forms or methods under cover of which control may in fact be effected. And since we must look to its acts of control, in addition to its power acquired by stock ownership, as the decisive test, we must scrutinize what has occurred in the past as the best indication of the manner and extent of the use which may be made of the power in the future.

In appraising the Steel Corporation's acts of control over the appellee, it is of significance that the dominant interest in the inter-company relationship, unlike that in the earlier cases brought before the Court, is that of production, and not transportation. Appellee, although a common carrier, subject to public duties and responsibilities, is, in its relation to the Steel Corporation and its subsidiaries, but an appanage to their vast steel producing business. While the commodities clause makes no distinction between the one type of domination and the other, such control of a railroad is far more menacing to the public and to rival producers than is domination of producer interests by a carrier. When the

carrier interest predominates, extension of its transportation facilities beyond the demands of its producing affiliates, and even to their competitors, with resulting benefit to the public, may well ensue. But where the producing interest is dominant, and the carrier is chiefly engaged in transporting the commodities of producing affiliates, restricted or indifferent service to competing producers and to the public, tardy or inadequate extension of facilities, discrimination in furnishing service and facilities, are dangers especially to be anticipated.

In such a relationship, control of carrier capital accumulation, expansion and expenditure, is a peculiarly convenient and effective means of subordinating carrier public service to the interests of production, by restriction of carrier expansion which would benefit the public and competing producers, or by allowing it only under discriminatory conditions. It is with these general considerations in mind, especially pertinent to the present case, that its facts should be examined.

Since its formation in 1901 the Steel Corporation has owned all the capital stock of the appellee railroad and of the Illinois Steel Company, a manufacturing company which appellee serves. Through lease, in 1909, of the Chicago, Lake Shore and Eastern Railway line, and the acquisition of appurtenant trackage rights over another line, appellee secured and maintains direct transportation facilities between the Illinois Steel Company and mines and quarries, all subsidiaries of the Steel Corporation. Sixty per cent. of appellee's tonnage is furnished by Steel Corporation subsidiaries.

Although the Steel Corporation is exclusively a holding and not an operating company, its by-laws defining the president's duties provide that he "shall have general charge of the business of the corporation relating to manufacturing, mining and transportation." The record shows that this authority is exercised by close and constant supervision over the business and affairs of Steel Corporation subsidiaries, not through the formal proceedings of stockholders and directors meetings, but through conferences and correspondence taking place directly between the officers of the Steel Corporation and those of its subsidiaries.

From 1901 to 1920 there were on appellee's board of directors never less than four officers or directors of the Steel Corporation, selected from its most important officers. Since 1920 the appellee's board of directors has been selected by appellee's

president and elected by him acting as proxy for the Steel Corporation. He has likewise selected the officers, who have been elected by the Board at his suggestion. The record is replete with evidence, chiefly correspondence, showing the complete subservience of appellee's president to the officers of the Steel Corporation in matters of corporate policy. The subservience of appellee's board of directors to its president, and through him in turn to the Steel Corporation, is exemplified by appellee's settled practice from 1910 until the time of suit of entering into contracts without any previous approval by its board of directors. At its annual meeting of directors the contracts which have been previously entered into, and often have already been performed, are ratified and confirmed. This procedure was followed with respect to all contracts, some 2,313 in number, executed on behalf of appellee between 1910 and 1933.

Appellee's fiscal policy has for many years been dominated and rigidly controlled by the Steel Corporation. Dividends have been habitually declared and the amount of them fixed only after securing, by correspondence, the consent and approval of the officers of the Steel Corporation. The Steel Corporation draws to itself the surplus funds of its subsidiaries, including appellee, which are deposited with it, for its own use, often upon its specific request or demand, and at a rate of interest which it fixes. These funds are withdrawn by draft of the subsidiary, payable only upon acceptance by the Steel Corporation, and customarily upon notice given in advance. From 1920 to 1933 appellee's aggregate deposits with the Steel Corporation were $79,000,000, of which $32,000,000 were made at the request or demand of the Steel Corporation.

Since its formation the Steel Corporation has maintained under its direction and control a clearance account, by which monthly settlement is made of inter-company accounts among its various subsidiaries. All of appellee's settlements of such accounts, except freight charges and traffic claims, are cleared through this account. The account is managed by the controller of the Steel Corporation. Interest is charged or allowed on balances due in the account at a rate of interest fixed by the treasurer of the Steel Corporation. Terms of settlement are controlled by it and not by free bargaining of debtor and creditor.

By direction of the finance committee of the Steel Corporation, its subsidiaries, including appellee, are required to obtain in ad-

vance the approval of the committee of all expenditures for capital account and improvements in excess of a specified amount. From 1920 to 1932 the limit was $10,000, since which it has been $5,000. Since 1908 the officers of the Steel Corporation have issued from time to time, to all its subsidiaries, instructions outlining in detail the rules and procedure governing their application to the Steel Corporation for its approval of their expenditures for improvements. This requirement was not perfunctory. Failure to secure from the officers of the Steel Corporation, in advance, the approval of capital expenditures, brought from them by letter or telegram swift reminder of the neglect. Requests for approval of proposed expenditures have been the occasion for careful inquiry by the officers of the Steel Corporation as to their necessity and propriety. In recent years approximately 70 per cent. of appellee's total capital expenditures have been of the class requiring consent by the Steel Corporation.* Included were items directly affecting appellee's transportation service, such as the cost of rolling stock, procuring an adequate water supply for its engines, improvement of its right-of-way, and additional yard facilities.

With such minute and continuous control of capital outlays of appellee by an organization primarily interested in production rather than common carrier service, it is not surprising that the only expansion of appellee during the period of control has been its lease of the line of the Chicago, Lake Shore and Eastern Railway, a subsidiary of a Steel Corporation producing affiliate, the Illinois Steel Company, which it served almost exclusively, and the acquisition through this lease of a trackage privilege over the Chicago & Eastern Illinois Railroad, restricted to the hauling of products of producing subsidiaries of the Steel Corporation—an arrangement by which appellee raised its tonnage from subsidiaries of the Steel Corporation from 25% to 60%.

It was the chairman of the board of the Steel Corporation, not the officers of appellee, who had the deciding voice in determining whether the lease should be taken and who assumed active control of the negotiations for its acquisition. Again, in 1920, when the

*Out of an annual average capital expenditure by appellee of approximately $900,000, during each of the years from 1926 to 1930 inclusive, an average of over $600,000 annually required the prior approval of the Steel Corporation. In 1930, appellee made capital expenditures of $1,910,755, of which $1,315,773 required the approval of the Steel Corporation. Appellee's total capital expenditures from 1926 to 1930 amounted to $4,597,925, of which $3,153,817 required such approval.

trackage agreement was subject to cancellation by reason of the receivership of the Chicago & Eastern Illinois, it was the chairman of the board of the Steel Corporation who actively controlled the successful negotiation for a continuance of the agreement.

The record discloses many other forms of actual control of the business and affairs of appellee by the Steel Corporation which it is unnecessary to detail. It is enough that those mentioned, when examined in their setting, show with convincing force that the appellee railroad is in fact obedient to the dominating control of producers of commodities which it transports. In every instance when the Steel Corporation has conceived that it had any interest to subserve, appellee has willingly done its bidding. In none has there been any indication of a disposition to pursue any policy not at least tacitly approved by the Steel Corporation. The active and continuous control over appellee's finances and expenditures is alone sufficient to create a continuing danger of neglect and abuse of appellee's carrier duties in favor of the dominating production and shipping interest, a temptation and an opportunity which it was the purpose of the commodities clause to forestall. In addition, the Steel Corporation has exerted that power, in the acquisition of the Lake Shore lease and its appurtenant trackage rights, to secure special advantages for its producing subsidiaries. The trackage rights extend only to hauling their own product, not that of their rivals.

This relationship passes far beyond that which is normal between a railroad and its stockholders and establishes a control over appellee's policy as complete as though it were but a department of the Steel Corporation. If the commodities clause permits control such as is exhibited here, one is at a loss to say what scope remains for the operation of the statute. Whatever views may be entertained of the soundness and wisdom of the decision in *United States* v. *Delaware & Hudson Co., supra*, it neither requires nor excuses our reduction of the commodities clause to a cipher in the calculations of those who control the railroads of the country.

Mr. Justice BRANDEIS and Mr. Justice CARDOZO concur in this opinion.